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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-5175

SEN. FRANK L. LUTTENBERG, NEW JERSEY
SEN. BOB MANLY, MARYLAND

April 15, 2013

The Honorable Gina McCarthy
Assistant Administrator for the Office of Air and Radiation
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, DC 20460


Dear Assistant Administrator McCarthy:

Thank you for appearing before the Committee on Environment and Public Works on April 11, 2013, at the hearing entitled, "Hearing on the Nomination of Gina McCarthy to be Administrator of the U.S. Environmental Protection Agency." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.


Enclosed are questions for you that have been submitted by Senators Boxer, Baucus, Carper, Lautenberg, Udall, Merkley, Gillibrand, Vitter, Inhofe, Barrasso, Sessions, Crapo, Wicker, Boozman, and Fischer for the hearing record. Please submit your answers to these questions by COB April 19, 2013, to the attention of Mara Stark-Alcalá, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to Mara_Stark-Alcala@epw.senate.gov. To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Grant Cope of the Majority Staff at (202) 224-8832, or Margaret Caravelli of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,



Barbara Boxer
Chairman



David Vitter
Ranking Member

Environment and Public Works Committee Hearing
April 11, 2013
Follow-Up Questions for Written Submission

Questions for McCarthy

Questions from:

Senator Barbara Boxer

1. Perchlorate is a dangerous drinking water contaminant that can harm the mental and physical development infants and children. In February 2011, EPA said it would regulate perchlorate under the Safe Drinking Water Act, and the Agency has stated that it anticipates issuing a proposed drinking water standard for perchlorate in 2013.

If you are confirmed, will you commit to provide me with a detailed status report and regular updates on the schedule for issuing a proposed and final rule to address perchlorate in drinking water?

2. Last year, USA Today published a series that investigated hundreds of old industrial sites that had emitted lead into the nearby areas, including where people live today. While EPA and states have tracked and begun cleanups at some sites, I believe that more must be done to protect families and children who live in neighborhoods near these sites. Cleaning these sites up is particularly important in light of the best available science demonstrating that lead is even more dangerous to the health of infants and children than we had previously known.

If you are confirmed, will you commit to review the adequacy of lead-contaminated soil and dust standards to ensure they are set or revised at a level that protects pregnant women, infants, and children, and will you commit to an open and public process of tracking and cleaning up these old lead-contaminated sites?

3. The EPA is revising a Chrome 6 risk assessment before deciding whether to regulate this toxic metal under the Safe Drinking Water Act. If confirmed, will you commit to provide me with:
 - a. Records that describe the conflict of interest disclosures by members of the panel reviewing the Chrome 6 risk assessment and follow-up actions undertaken by the Agency to address any conflict of interest concerns raised by members on the review panel; and
 - b. A schedule for expeditiously finishing this risk assessment and making a decision on whether to regulate Chrome 6 as a drinking water contaminant?
4. In April 2013, EPA issued proposed revisions to the Protective Action Guidelines (PAGs), which should be used to help federal, state, and local officials make decisions that protect public health and environment when addressing an emergency involving the release of radiation.

If confirmed, will you agree to review the proposed guidance and work to ensure strong public health protections in the final guidance, including reviewing whether the guidance is sufficient to protect public health and ensure that the public is fully informed about the potential health threats from exposure to radiation at or below levels that the guidance uses to initiate or complete agency actions?

5. In February 2013, EPA issued a final rule strengthening protections for pesticide research that involves people, including pregnant women and children. If confirmed, will you commit to ensure that the rule's protections are strictly applied and that Agency guidance on these matters incorporates, at a minimum, the protections contained in the February 2013 rule?
6. EPA issued a proposed rule on whether to regulate the safe disposal of coal ash waste in June, 2010. If confirmed, will you agree to immediately provide a detailed report of the Agency's plans and actions in connection with issuance of a final rule on this important Agency initiative?
7. I believe that it is important for Congress to pass bipartisan legislation to reform and improve the Toxic Substances Control Act (TSCA) so that it protects people, including pregnant women, infants, and children, from dangerous chemicals and ensures that chemicals used in everyday products are safe for our children and families. If confirmed, will you work closely with me on the Agency's activities in connection with modernizing TSCA and provide me with timely technical assistance in assessing such efforts?
8. While the Agency has made important strides in helping to address environmental injustice in communities harmed by dangerous air pollution, toxic waste sites, and other environmental health threats, many environmental justice communities continue to suffer. As Administrator Jackson stated in EPA's plan to help the Agency better address environmental justice issues: "Plan EJ 2014 offers a road map that will enable us to better integrate environmental justice and civil rights into our programs, policies and daily work. The plan focuses on agencywide areas critical to advancing environmental justice, including rulemaking, permitting, compliance and enforcement, community-based programs and our work with other federal agencies."

If confirmed, do you agree to provide me with a comprehensive overview of the Agency's efforts to implement the 2014 Plan and to update me on the Agency's achievement of specific interim and long-term goals to better integrate agency environmental justice activities, as described in the 2014 Plan and other EPA and White House policies and guidance documents?

Senator Max Baucus

1. EPA plans to finalize nonattainment designations in June 2013 for the revised sulfur dioxide national ambient air quality standard. EPA has proposed a nonattainment designation for Yellowstone County, Montana, where almost 1,000 Montanans work at the three local oil refineries. Given the status of documented anomalies in the county's 2010 monitored emissions that appear unrepresentative of recent and projected emissions trends, will you commit to work closely with me on Yellowstone County's final designation?
2. EPA is currently revising a draft toxicological assessment of the type of amphibole asbestos found in Libby, Montana. This assessment will quantify the danger posed by "Libby Amphibole." While cleanup of asbestos in Libby under the Comprehensive Environmental Response, Compensation, and Liability Act began in 2002, it remains essential that the final cleanup reflect the best available science. Will you commit that EPA will proceed deliberately with finalizing the assessment and determining its impact on the cleanup in Libby?
3. On February 4, 2013, the EPA Office of Water released unredacted state-collected information about an estimated 85,000 to 100,000 livestock and poultry operations under the Freedom of Information Act. The data related to concentrated animal feeding operations (CAFOs). I am deeply disappointed at how this action confirms a common perception in rural states like Montana that EPA approaches every farm or ranch activity as if it is a violation waiting to happen.

For example, the data related to Montana includes sensitive information about deceased spouses, elderly widows, speculation about pasture leasing within families, and confidential business information about the precise size of livestock operations. Our federal sunshine laws appear to have been used to empower private citizens to obtain personal information about other private citizens.

- a. Given this very recent EPA action, the agency's admission that it incorrectly failed to redact information collected by ten states (including Montana), and your experience as the Assistant Administrator of the Office of Air and Radiation, what specifically do you plan to do to prevent incidents like this in the future?
 - b. More generally, why the heck should Montana farmers and ranchers trust EPA in the future?
4. In the wake of the 2008 failure of a dike used to contain fly ash at the Tennessee Valley Authority's Kingston Fossil Plant, EPA initiated a rulemaking for coal combustion residuals under the Solid Waste Disposal Act. Four and a half years after the Kingston spill, the rulemaking is ongoing and coal combustion residuals remain regulated only by inconsistent state laws. Will you commit to work with members of Congress on amending the Solid Waste Disposal Act to authorize the regulation of coal combustion residuals under a nonhazardous waste permit program?

Senator Thomas Carper

1. In my written statement, I complement your efforts to work across the aisle and with various stakeholders toward a consensus-based approach. One such example is your work regarding poultry and feedstock air monitoring. It is my understanding that the EPA – under your leadership in the air office– has been working to review and process air emissions monitoring data collected by leading air researchers from U.S. poultry and livestock farms as part of EPA’s National Air Emissions Study. This collaborative effort between industry and the EPA is intended to help develop tools to help poultry and livestock farmers better monitor their emissions. It is also my understanding that the development of these tools has been more challenging than expected, and you have asked the Science Advisory Board for assistance. If confirmed as EPA Administrator, will you continue to ensure good and sound science is applied to the development of these estimating tools, and for taking the time necessary to see that is done?
2. Last year, this country saw one of the worst droughts it has seen in over fifty years. As a result, corn prices skyrocketed, which in turn caused huge price spikes for those farmers that depend on corn feed for the animals they raise. In response to these high prices, some governors petitioned the EPA for a waiver to the RFS for fuels made from corn. As you know, the agency denied the waivers because EPA determined there would be no impacts to our economy – for better or worse – if the waivers were approved.
 - a. Since you oversee the part of EPA responsible for the RFS, what were the critical factors and thresholds EPA used to determine economic disruptions from the RFS?
 - b. If confirmed as EPA Administrator, what data will you need to see to approve a RFS waiver if we continue to have record droughts into the future?
3. During your term as Assistant Administrator for Air, you finalized the Cross-state Air Pollution Rule which addresses transport pollution that crosses state boundaries. This is air pollution that drifts downwind across state lines to states like Delaware– making it hard for Delaware to comply with public health air quality rules. Unfortunately, this rule was vacated by the DC Circuit Court. If confirmed as EPA Administrator, can I have your assurances that you will continue to address the problem of air transport – an ongoing issue that risks the lives of thousands of Americans, many of which are living in my home state of Delaware?
4. If confirmed as EPA Administrator, you will likely oversee the finalization of new standards under Section 316(b) of the Clean Water Act regarding the best technology available for the location, design, construction and capacity of cooling water intake structures. Many of the constituents that will be impacted by this rule are similar to the ones you have dealt with in your days as Assistant Administrator for Air. As you know from experience, facilities in the same source category can be constructed very differently depending on various factors such as location and age – making it hard at times to have a one-size-fits-all approach. The 316(b) rule crosses over so many different types of source categories – the variants between facilities are likely to be exponential – which makes a blanket approach even less practical.
 - a. If confirmed, do I have your assurances that when issuing the 316(b) rule you will consider flexibilities that will allow facility owners to comply with a rule in a way that makes it as economical as possible for that facility, while still putting in standards that protect our water wildlife?

- b. When determining the cost-benefit ratio for new 316(b) regulations or other rules coming before you, do I have your assurances that you will use the best science available to determine both costs and benefits?

Senator Frank R. Lautenberg

1. The Government Accountability Office has listed the Toxic Substances Control Act (TSCA) as a “high risk” area of the law due to its limited ability to protect Americans from toxic chemicals. In September 2009, former Administrator Jackson unveiled six principles to reform and modernize TSCA.

Do you support these principles?

2. In 2012, the Environmental Protection Agency (EPA) announced plans to conduct risk assessments for 83 chemical substances under the Toxic Substances Control Act (TSCA). These chemicals were selected based on existing information demonstrating health hazards and widespread exposure. In many cases, these chemicals are found in everyday consumer products.

What constraints does the EPA face in performing these risk assessments, including potential efforts to pursue risk management for chemical substances that are found to pose a risk, due to the statutory limitations of TSCA?

3. Superstorm Sandy decimated New Jersey’s coastal communities, claiming lives and causing tens of billions of dollars in damage. Since climate change will continue to increase the intensity of hurricanes and other extreme weather, this type of damage will only be more likely in the future.

How will the EPA incorporate the rising cost of extreme weather damage when considering actions to address climate change?

4. There are currently 1,312 Superfund sites in the U.S., including 111 sites in New Jersey. Over the past decade, construction completions have steadily declined as federal funding for the program has been reduced.

Would the EPA be able to increase the number of construction completions and site removals from the National Priorities List if the Superfund tax were reinstated?

Senator Tom Udall

San Juan Generating Station

1. During my opening remarks, I mentioned the recent settlement between EPA, the State of New Mexico and PNM Resources.
 - a. EPA has been charged with overreaching on regional haze rules. The story of the San Juan Generating Station would suggest otherwise, wouldn't it?
 - b. In the end, we want the states implementing these programs, don't we?

Navajo Generating Station

2. Last spring, I understand that you toured the Navajo Generating Station in Arizona to see first-hand the plant operations and community. With your five hour drive there, I am sure the remoteness of the location was very apparent to you.

As you know, the plant and mine have 1,000 jobs, over 800 of which come from the Navajo Nation, where unemployment levels fluctuate between 40 and 45 percent. This is particularly important to Navajo living and working in New Mexico.

- a. Given the importance of the plant, and the impact potential regulations can have on it, can EPA continue to work with the Navajo Nation the way it worked with the State of New Mexico and PNM to ensure that the economic necessities of the tribe and its unique reliance on the Navajo Generating Station are appropriately taken into consideration in EPA decision-making?
- b. Do you believe EPA will work with all stakeholders who are seeking reasonable ways forward to address pollution issues, but to preserve jobs and keep electricity rates down?

Uranium Cleanup

3. Ms. McCarthy, EPA Region 9 recently concluded a five year plan to address uranium contamination in the Navajo Nation. In coordination with several other agencies, including the Bureau of Indian Affairs, Department of Energy, Nuclear Regulatory Commission and others, EPA Region 9 was able to take significant steps towards addressing uranium legacy issues in the Navajo and Hopi Nations. It is my understanding that the EPA is coordinating with the other agencies to identify next steps in cleanup of uranium contamination and expects to have a new five year plan for this region put together by this coming fall.

Additionally, EPA Region 6, which covers the rest of New Mexico, is currently carrying out a similar 5 year plan to address legacy uranium in my state. I applaud the agency for taking these deliberate steps to address this important public health and environmental issue.

- a. If confirmed, will support the efforts being carried out by EPA Regions 6 and 9 to address legacy uranium issues?
- b. Will you continue to seek out and collaborate with the other relevant agencies to ensure that cleanup of legacy uranium is completed in New Mexico and the Navajo Nation?

- c. Will you continue to ensure that these efforts are carried out in coordination with, and through consultation with the Navajo Nation and other local tribes and communities?

Senator Jeff Merkley

1. During the last several years, the windows manufacturing and installing industry has been through difficult market declines and destabilizing economic times. While the overall economy has been challenging to many Americans, those in the housing sector have been particularly hard hit. One of the major areas of interaction between those who provide windows to the market and consumers is the Energy Star program.

The Energy Star program is essential to delivering information to consumers on how to buy the most energy efficient appliances and products. My understanding is that the EPA is currently reevaluating the proposed standards for the Energy Star for Windows, Doors, and Skylights. The original proposed effective date the new standard was targeted for the end of this calendar year. Obviously, the Agency's thoughtful review of the standard has taken longer than envisioned.

New standards involve significant and expensive changes to production, which means that manufacturers need substantial notice to give time to make those changes. In the interest of providing certainty to this important domestic manufacturing industry, EPA's own guidelines for progressing from final proposal to effective date requires no less than 9 months and the product cycle for manufacturers really requires a January 1 effective date. Can you confirm that the effective date for whatever the new standards may come from this process will be January 1, 2015 to prevent unnecessary and extraordinary ramp up costs for a sector struggling to recover from the recession?

2. The forestry sector is very important in my state. It provides 120,538 jobs, \$4 billion in payroll, \$11.8 billion in sales and \$4.15 billion toward Oregon's state GDP.

An important decision made under your direction was the three-year deferral of "biogenic GHG emissions" from biomass under the Tailoring Rule. Until the deferral, the Tailoring Rule would have treated biogenic GHG emissions the same as GHG emissions from fossil energy.

The decision by your office at EPA was to defer the regulation of biomass under the Tailoring Rule to take a closer look at the science and policy. My understanding is that EPA has now completed the Biogenic Carbon Accounting Framework, and that framework has been reviewed by an independent Scientific Advisory Board.

Now we need a final policy that fully recognizes the carbon benefits of biomass energy, and we need it done before the deferral period you put in place expires in July of 2014. When the deferral expires, we revert back to the policy in the original Tailoring Rule.

When do you intend to issue a proposal?

3. Among the Potential Responsible Parties for cleaning up the Portland Harbor Superfund site, there is a group of stakeholders called the Lower Willamette Group who have chosen to work in collaboration with the Environmental Protection Agency to expedite the planning and cleanup process. The fourteen members of the Lower Willamette Group have already invested close to \$100 million in the past 12 years since the Portland Harbor Superfund site was put on the National Priorities List by the EPA.
 - a. Will you closely follow the Portland Harbor Superfund process as the EPA Regional Office and the parties involved try to reach a balance between protecting the environment

and public health on the one hand, and incurring reasonable cost and time requirements on the other hand?

- b. Can I also count on the EPA to work collaboratively with the Lower Willamette Group to ensure the planning process is completed expeditiously, so that the cleanup of the river can begin?

Senator Kirsten E. Gillibrand

1. I would like to thank you for all of the hard work that you put into the proposed Tier 3 rule to reduce tailpipe emissions. I believe that this is a good rule, and will result in significant health and air quality benefits for the American people by reducing the amount of sulfur emissions released into the environment. Regions across my State of New York are expected to see ozone reductions by 2030 because of Tier 3.

Can you discuss for the Committee some of the positive health and environmental benefits that we could be expected to see by implementing the Tier 3 rule by the end of this year?

2. Thank you for mentioning the need to reform our country's chemical laws in your testimony. I have been working closely with Senator Lautenberg on reforming the Toxic Substances Control Act. I have been appalled to learn that under the current TSCA regime, the EPA is practically powerless to regulate chemicals that are known carcinogens - such as asbestos and formaldehyde, and other dangerous hormone-disrupting chemicals such as BPA, which are found in childrens' products.

Would you agree that the current TSCA system is inadequate to protect public health and give consumers the necessary information that they need to make informed decisions about which products are safe for themselves and their families?

3. When we met a few weeks ago, I discussed with you the importance of Long Island Sound, and asked for your help to build on the progress that we have already made to improve the water quality and natural ecosystems of the Sound. I know that you are very familiar with this issue from your time as the Connecticut Commissioner for Environmental Protection.

If confirmed, will you make the Long Island Sound a priority and work with my office to ensure that the programs to improve the Sound receive adequate attention and funding?

4. The New York Times recently wrote an article on March 15th highlighting the serious issue of blue-green algae on to Lake Erie. While the algae is currently concentrated on the western end of the Lake, there are concerns that the algae problem could spread more widely and threaten Western New York's economy and aquatic resources.

If confirmed, will you make it a priority to address the spread of harmful algae in the Lake Erie?

Senator David Vitter

	<u>Subject</u>	<u>Request</u>
Vitter	Aggregation	EPA has a policy of “aggregating” a number of different emissions points into a single stationary source. EPA’s regulations require that these emissions points be “contiguous or adjacent” to each other, yet EPA is implementing a policy, found nowhere in its regulations but based on a Memorandum that you drafted, that emissions points may be aggregated even if they are many miles apart if EPA finds them otherwise "interrelated".
Vitter	Aggregation	Recently, the U.S. Court of Appeals for the Sixth Circuit rejected EPA's interpretation, where EPA claimed that over a hundred gas wells and a processing plant, spread out over 43 square miles, were contiguous or adjacent to each other. Despite the court’s conclusion, EPA issued a December 2012 memo declaring that it would ignore the Sixth Circuit’s case in most states. Why does EPA insist in pursuing an interpretation of “aggregation” that is not in the regulations, that contradicts the common meaning of “contiguous and adjacent,” and flouts the decision of a court of appeals?
Vitter	Aggregation	If confirmed as EPA Administrator, will you commit to adopt the common sense and legally correct reasoning of the Sixth Circuit across the nation? Why shouldn’t a common sense, legally defensible, dictionary definition of “adjacent” apply throughout the country?
Vitter	MACT	Can you make a clear, unambiguous public statement that clarifies that efforts to comply with the utility MACT do not and will not make a facility subject to the new source performance standard for greenhouse gases?
Vitter	MACT	Will the agency publish guidance on this issue that makes this clear?
Vitter	MACT	At a hearing recently, Congressman Barton asked you how many people presented to American hospitals last year with mercury poisoning. What is the answer to that question?
Vitter	Carbon Tax	The IMF recently released a study that equated a lack of a carbon tax with a subsidy for fossil fuels. Do you think that is correct? Do you favor a carbon tax, imputed or direct?
Vitter	Carbon Tax	What do you think the social cost of a ton of carbon is?
Vitter	Carbon Tax	As you know, the EPA led an interagency study a few years back to examine the social cost of carbon. They examined a range of numbers, none of which were particularly justifiably. They also used one discount rate to assess costs and one to assess benefits, which is, I believe, contrary to OMB practice and guidance. Will you initiate such a study again? Will you open the study to notice and comment?
Vitter	GHG	What is the right target for United States emissions of greenhouse gases? How many tons a years should we be emitting to minimize our exposure to harmful global warming?
Vitter	GHG	Alternatively, what concentration of greenhouse gases in the atmosphere is harmful to human health?

Vitter	GHG	Where are the most cost-effective reductions of greenhouse gases likely to be?
Vitter	GHG	Can you give me any assessment of the additional mortality (deaths) or morbidity associated with the emissions of greenhouse gases? I know that EPA is always very precise about the mortality and morbidity associated with ozone and particulate matter and even mercury. Does it have the same sort of analytical rigor with respect to greenhouse gases?
Vitter	GHG	If greenhouse gases are air pollutants, and if they endanger public health, and if they come from numerous large, area, and minor sources, why has the agency not chosen to regulate them under the NAAQS program? If we believe GHGs are deleterious to public health, isn't the appropriate response to promulgate a standard above which humans are at risk?
Vitter	NSPS - existing	Has the agency done any legal analysis of the challenge of regulating greenhouse gases from powerplants under 111(d)? Can you share it with me?
Vitter	NAAQS	Can you identify language in Section 109 of the Clean Air Act that specifically prohibits the consideration of costs in the setting of National Ambient Air Quality Standards?
Vitter	NAAQS	As part of the standard setting process, is EPA prevented from comparing the health and other effects of a considered NAAQS standard with the health and other effects of unemployment and economic dislocation?
Vitter	NAAQS	Leaving aside the question of cost, how does EPA assess the health benefits associated with economic dislocation caused or likely to be caused by the new standards? Certainly there is some. Certainly it has effects or potential effects on human health. How are they quantified when you are making health-based assessments for revised national ambient air quality standards?
Vitter	NAAQS	The Centers for Disease Control has cited numerous triggers for asthma attacks that are unrelated to air quality. How is that data factored into determination of revised NAAQS?
Vitter	NAAQS	Will you commit to working with the CDC and others outside the agency to ensure that we are using the very best science before you set the new ozone standard?
Vitter	NAAQS	If you do lower the standard for ozone, what do you imagine will be the compliance burden on the States? In other words, what portion of the additional emissions reductions will be as a result of things like fleet turnover, and what will localized compliance options look like?
Vitter	NAAQS	If the sole concern of a NAAQS standard-setting exercise is human health (and a protective margin for it), why is setting the standard at background levels not always the best and simplest answer?
Vitter	NAAQS	If the sole concern is health, why is OMB involved? Why are there any policy considerations at all? If the dose is the only relevant metric, why is the Administrator involved? What considerations do OMB, the Administrator, and all others involved in the process bring to bear?

Vitter	RFS	Is ethanol good for the economy; does it make sense economically?
Vitter	RFS	Do you think we will have 21 billion of gallons of advanced cellulosic available by 2030?
Vitter	PM	What percentage of the health benefits claimed or projected for all rules related to air emissions proposed in the last five years are the result of lowered emissions of particulate matter?
Vitter	PM	Has the agency ever claimed that there would be health benefits for levels of particulate matter below the NAAQS for particulate matter?
Vitter	PM	If so, can you explain?
Vitter	PM	Do you think the speciation of particulate matter is unimportant? Has the agency conducted any studies to examine the potential effect of the chemical composition of particulate matter? What have they shown?
Vitter	backroom deals	Have you or anyone at the agency (to your knowledge) ever asked or in any solicited an NGO or other organization or person to petition or sue the agency?
Vitter	backroom deals	In the last five years, how many petitions or lawsuits that have subsequently been settled have been initiated by entities or persons who are not regulated by the agency? How many of those settlements have included requirements on the agency to promulgate a rule or alter the schedule of a rule already being promulgated?
Vitter	backroom deals	In the last five years, how many petitions or lawsuits that have subsequently been settled have been initiated by entities or persons who are regulated by the agency? How many of those settlements have included requirements on the agency to promulgate a rule or alter the schedule of a rule already being promulgated?
Vitter	automobile mandates	Your predecessor indicated that the new automobile mandates would add "a little upfront" cost to cars. Yet in its own documents the federal government estimates that the additional cost for a new car will increase \$3200 on average as a result of the mandate. How would you characterize that amount?
Vitter	automobile mandates	Who should be primarily responsible for designing automobile mandates, EPA, DOT, or California?
Vitter	costs	How regressive are the costs imposed by environmental regulations? Has the agency ever examined that?
Vitter	Energy Reliability	How concerned are you about the growing reliance of utilities on natural gas to fire powerplants? The simple reality is that natural gas is intensely volatile with respect to price. It always has been and it probably always will be. Coal, on other is very stable with respect to price. Do you think people will blame the agency when their electricity prices start to climb or, worse, gyrate? How concerned are you about public backlash against the agency eroding its ability to do its important work.

Vitter		How many people at the agency/among your direct reports have ever worked in the regulated community?
Vitter		How many discretionary rulemakings, that is, those not explicitly required by statute, is the agency undertaking currently?
Vitter		Would it be helpful if Congress gave the agency more specific instructions in statute?
Vitter	CBA	Would it be worthwhile for the agency to conduct a “look-back” at the costs and benefits of regulations encoded over the years? Would it be wise to include stakeholders in that process?
Vitter	CBA	Should the federal government annually estimate the costs and benefits of all of its regulations?
Vitter	Carbon Tax	Do you favor the Sanders Boxer legislation? Do you think it is directionally correct?
Vitter	Energy Reliability	<p>Since 2010 demand for natural gas has outpaced the delivery capacity of natural gas infrastructure. While coal plants keep a pile of coal on site for generation, gas plants tend to receive fuel as it is needed. During severe weather conditions -whether cold, hot or storms – there is great value in a “coal pile” that can be deployed at those times. If it were only market conditions, or the current lower price of natural gas, coal plants would not be closed – utilities would simply run gas plants more, run coal plants less but keep them in the generation mix as an option for future needs. Recent experience in New England has shown that electric reliability is challenged during these weather related events. Electricity prices in New England were four to eight times higher than normal during a recent snowstorm as the region’s overwhelming reliance on natural gas for power collided with a surge in demand for heating.</p> <p>Are you concerned that a major emergency back-up resource – the coal pile – will not be available in future weather events/emergencies?</p>
Vitter	Energy Reliability	Are you concerned that regions of the country, like New England that rely on a single fuel source for the bulk of its power leave the region open to more supply and price disruptions versus a region with a diverse fuel mix?
Vitter	Energy Reliability	How many electricity reliability experts are on EPA’s staff in the Office of Air and Radiation? In the Agency as a whole?
Vitter	Energy Reliability	During extreme weather conditions – whether cold, hot or hurricane – there is great value in a “coal pile” that can be deployed at those times. If it were only market conditions, or the current lower price of natural gas, coal plants would not close – utilities would simply run gas plants more, run coal plants less but keep them in the generation mix for future needs. Electric reliability is challenged during exactly these weather related events. Are you concerned that a major emergency back-up resource– that “coal pile” – will not be available in future weather emergencies?

Vitter	CCS	<p>In March of 2012, EPA proposed New Source Performance Standards (NSPS) for CO2 for new coal, oil and natural-gas fired power plants. As proposed, the regulation would effectively prohibit the construction of new coal fired power plants.</p> <p>EPA's proposal for new power plants abandons decades of precedence under the Clean Air Act (CAA) by setting one standard for all fuel types used in electricity generation. Historically, EPA considered each fuel type in a separate category with a separate standard. In the proposal all the fuel choices (coal, oil, and natural gas) are included in one overarching category/standard. The standard is that for natural gas, which in reality will be impossible for coal and oil to meet. In other words, the required "best demonstrated technology" for all categories to achieve the emission limitation is a natural gas combined cycle plant. New coal fired power plants would have to utilize carbon capture and storage (CCS) technologies that currently do not exist.</p> <p>EPA makes several statements and assumptions regarding CCS in the NSPS proposal including that new coal fired units could comply with the rule through a 30 year averaging option that would allow them to deploy CCS in 11th year of operation and average emissions over a 30 year span.</p> <p>Is CCS commercially feasible today?</p> <p>Is there a legal and regulatory framework available to handle the sequestration of CO2 captured through CCS? Is there liability and insurance framework in place?</p>
Vitter	Tier III	<p>Your Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as "forward looking" while admitting that E15 is now only commercially available in a limited number of fuel retailers.</p> <p>E0 is now the test fuel and E10 is the predominant gasoline blend in the market. Given this reality, why is EPA pushing E15 as the new certification fuel now?</p> <p>Would it not be prudent for EPA to wait and see how E15 performs in the marketplace prior to mandating its use as the new certification fuel?</p>
		<p>You have been working on a Tier 3 rule for some time, when was the decision made to propose E15 as a certification fuel? Please provide the Committee with a list of all meetings or contacts with non-governmental entities, as well as any associated records and documents (whether internal EPA records or documents or otherwise) with regard to the issue of mandating E15 as a certification fuel prior to the release of the proposed rule.</p> <p>Please provide the Committee with a detailed written analysis regarding how finalizing E15 as a certification fuel would affect EPA's assessment of future waiver requests for higher ethanol blends under Clean Air Act section 211(f)(4).</p>

Vitter	Tier III	Has EPA ever previously required changes in certification fuel prior to the introduction of a fuel into the mass market?
Vitter	E15	<p>Last year, the D.C. Circuit ruled that petitioners did not have standing to challenge EPA's decision to approve E15. The court did not rule on the merits, but judges on the panel expressed concerns over EPA's interpretation of its Clean Air Act authority to grant a waiver for E15.</p> <p>Different affected parties have filed for certiorari at the Supreme Court. Will EPA wait to see what happens to these petitions prior to finalizing any changes to certification fuel if the Court grants certiorari?</p> <p>Does it concern you that the D.C. Circuit expressed serious concerns over the EPA's interpretation of the Clean Air Act waiver provision, both at oral argument and in a dissenting opinion? How should this affect EPA's approach to future waiver requests?</p>
Vitter	Tier III	<p>Your Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as "forward looking" while admitting that E15 is now only commercially available in a limited number of fuel retailers. Further, in the Regulatory Impact Analysis (RIA) for your proposed rule you are also assuming that E85 use will be negligible in 2017 to 2030.</p> <p>Doesn't this just affirm that your operating assumption is that consumers will be left with no choice but to use E15 whether they want to or not?</p> <p>Doesn't this mean that EPA doesn't consider E85 a viable option for meeting renewable fuel standard requirements?</p>
Vitter	E15	<p>Your Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as "forward looking" while admitting that E15 is now only commercially available in a limited number of fuel retailers. E15 is not the certification fuel in California. It is E10. I understand that California does not permit its gasoline to be E15.</p> <p>EPA has touted national uniformity in many areas of mobile source regulation, why have you proposed E15 as a federal certification fuel when it cannot be used as such in California?</p>

Vitter	316(b)	In EPA's proposed 316(b) rule EPA has adopted starkly different approaches to managing "impingement" and "entrainment" at existing cooling water intake structures. For entrainment, EPA appropriately adopted a site-specific approach, recognizing that (a) existing facilities already have measures in place to protect fish, (b) further measures may or may not be needed, and (c) the costs, benefits, and feasibility of such measures have to be evaluated at each site. Yet for impingement, EPA adopted rigid, nationwide numeric criteria that appear unworkable and in many cases unnecessary. In a notice of data availability issued last year, EPA signaled that it would consider a more flexible approach for impingement. In the final rule that is due this summer, would you support replacing the original impingement proposal with a more flexible approach that pre-approves multiple technology options, allows facility owners to propose alternatives to those options, and provides site-specific relief where there are de minimis impingement or entrainment impacts on fishery resources or costs of additional measures would outweigh benefits?
Vitter	316(b)	In EPA's proposed 316(b) rule, EPA has correctly NOT required existing facilities to retrofit "closed cycle" systems such as cooling towers or cooling ponds if the facilities do not already have such systems, because such retrofits are not generally necessary, feasible, or cost effective. At the same time, facilities that do have closed-cycle systems have long been viewed as satisfying the requirements of section 316(b). Yet in the proposed rule, EPA has defined "closed cycle" cooling much more narrowly for existing facilities than EPA did for new facilities several years ago, thereby excluding a number of facilities. And even for the facilities that qualify, EPA is still imposing new study and impingement requirements. In the final rule that is due this summer, would you support a broader definition of closed-cycle cooling and measures that more fully view these facilities as compliant?
Vitter	316(b)	How does EPA intend to utilize its final stated preference report? If EPA intends to use it in the final rule, what process will EPA undergo to address concerns raised by stakeholders about the applicability and appropriateness of its use?
Vitter	321(a) CAA	Has EPA ever investigated a plant closure or reduction in employment to see what role, if any, the administration or enforcement of the Clean Air Act played?
Vitter	AAPCA	Who made the decision to force Battelle to drop the AAPCA contract? Were you aware of EPA's course of action before or after EPA's ultimatum to Battelle was made? When you did become aware of this action? Have you considered how this will set a precedent in all future contracting actions? Does EPA's policy affect EPA contractors that have contracts with environmental organizations or industry?

Vitter	Aggregation	Recently, the U.S. Court of Appeals for the Sixth Circuit rejected EPA's interpretation with respect to aggregation, where EPA claimed that over a hundred gas wells and a processing plant, spread out over 43 square miles, were contiguous or adjacent to each other. Despite the court's conclusion, EPA issued a December 2012 memo declaring that it would ignore the Sixth Circuit's case in most states. Why does EPA insist in pursuing an interpretation of "aggregation" that is not in the regulations, that contradicts the common meaning of "contiguous and adjacent," and flouts the decision of a court of appeals?
Vitter	Aggregation	If confirmed as EPA Administrator, will you commit to adopt the common sense and legally correct reasoning of the Sixth Circuit across the nation? Why shouldn't a common sense, legally defensible, dictionary definition of "adjacent" apply throughout the country?
Vitter	Automobile Mandate	The basic fuel economy statute, the Energy Policy Conservation Act (EPCA), expressly preempts state laws or regulations "related to" fuel economy standards. This is a very broad statement of preemption. It prohibits states not only from adopting fuel economy standards, but also from adopting laws or regulations "related to" fuel economy standards. Do you agree?
Vitter	Automobile Mandate	For the sake of argument, let's assume that greenhouse gas motor vehicle standards, like those based on California's motor vehicle emissions law, AB 1493, are "related to" fuel economy standards. I know you don't think they are, but for now, let's assume there is a relationship to fuel economy standards. If there was, would it be lawful for California to implement AB 1493? Would it be proper for the EPA to grant California a waiver to implement it?
Vitter	Automobile Mandate	Key agency documents and even AB 1493 itself imply that motor vehicle greenhouse gas emission standards and fuel economy standards are closely related. EPA and NHTSA acknowledge in their May 2010 Tailpipe Rule that no commercially available technologies exist to capture or filter out carbon dioxide (CO2) emissions from motor vehicles. Consequently, the only way to decrease CO2 per mile is to reduce fuel consumption per mile -- that is, increase fuel economy. Carbon dioxide constitutes 94.9% of vehicular greenhouse gas emissions, and "there is a single pool of technologies . . . that reduce fuel consumption and thereby CO2 emissions as well." What this analysis tells me is that greenhouse gas motor vehicle emission standards inescapably and primarily regulate fuel economy. Do you agree?

Vitter	Automobile Mandate	The framework document for the Obama administration’s model year 2017-2025 fuel economy program, the September 2010 Interim Joint Technical Assessment Report published by the EPA, NHTSA, and the CARB, considers four fuel economy standards, ranging from 47 mpg to 62 mpg. Each is the simple reciprocal of an associated CO2 emission reduction scenario. The 54.5 mpg standard for model year 2025, approved by the White House in August 2012, is a negotiated compromise between the 4% per year (51 mpg) and 5% per year (56 mpg) CO2 reduction scenarios. If fuel economy standards derive mathematically from CO2 emission reduction scenarios, and CO2 accounts for 94.9% of all greenhouse gas emissions from motor vehicles, are not the two types of standards related?
Vitter	Automobile Mandate	Nearly all of CARB’s recommended technologies for reducing greenhouse gas emissions (Table 5.2-3 in CARB’s 2004 Staff Report on options for implementing AB 1493) were previously recommended in a 2002 National Research Council study on fuel economy (Tables 3-1, 3-2). CARB proposes a few additional options, but each is a fuel-saving technology, not an emissions-control technology. These facts tell me that greenhouse gas emission standards inescapably and primarily regulate fuel economy. What conclusion do you draw?
Vitter	Automobile Mandate	In AB 1493 itself, CARB’s greenhouse gas standards are to be “cost-effective,” defined as “Economical to an owner or operator of a vehicle, taking into account the full life-cycle costs of the vehicle.” CARB interprets this to mean that the reduction in “operating expenses” over a vehicle’s average life must exceed the expected increase in vehicle cost (Staff Report, p. 148). Virtually all such “operating expenses” are expenditures for fuel. CARB’s implementation of AB 1493 cannot be “cost effective” unless CARB substantially boosts fuel economy. Do you agree?
Vitter	Automobile Mandate	How does the “national” program created in the wake of this backroom deal comport with congressional intent? Under the statutory scheme Congress created, one agency – NHTSA – to regulate fuel economy under one statute – EPCA as amended by the Energy Independence and Security Act (EISA) – through one set of rules – corporate average fuel economy. Today, three agencies – NHTSA, the EPA, and CARB – make fuel economy policy under three statutes – EPCA, the Clean Air Act, and AB 1493 – through three sets of regulations. Where does EPCA as amended authorize this triplification of fuel economy regulation?

Vitter	Automobile Mandate	49 U.S.C. § 32919 says: "When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards." Yet holding out the threat of California setting greenhouse gas standards that were very clearly "related to fuel economy standards" was almost certainly at the heart of what went on in that secret negotiations. Two questions: Are vehicle greenhouse gas regulations wholly unrelated to fuel economy? If not, how can we have any confidence that you won't try to sidestep clear statutory limits on your authority as administrator?
Vitter/Boozman	Backroom Deals	Rulemaking is increasingly being accomplished through the use of consent decrees that commit the EPA to taking specific regulatory actions. The consent decrees agreed to by EPA and outside groups often commit EPA to specific actions and timeframes. If EPA is going to make specific regulatory commitments to outside groups, shouldn't there be an opportunity for Congress or the public to comment on these commitments before they are made, rather than having the opportunity to comment only after legally enforceable policy commitments are made by EPA?
Vitter	Backroom Deals	In February, EPA published the startup, shutdown, or malfunction (SSM) rule, which will force state officials in 36 states to come back to EPA for approval of provisions of their implementation plans. EPA has been crafting this policy since reaching an agreement with the Sierra Club in connection with litigation in November of 2011. How many officials from the states affected by the February SIP call did you meet with prior to announcing the Call? When did you meet with them?
Vitter	Backroom Deals	EPA is constantly being sued for missing statutory deadlines for rulemaking and then settling the resulting litigation in a court approved settlement agreement. The deadlines in these settlements sometimes put extreme pressure on the EPA to act, and also may create hardships for regulated businesses by interfering with construction plans or requiring large investments in a short period of time. Do you believe that EPA should first consult with the adversely affected parties and other stakeholders before agreeing to such deadlines?
Vitter	Backroom Deals	Why doesn't EPA have a policy of insisting on the inclusion of relevant stakeholders into lawsuits?
Vitter	Backroom Deals	What will you do to ensure that States, local governments, and other stakeholders have the ability to meaningfully participate in settlement negotiations for lawsuits that involve EPA's failure to perform a non-discretionary administrative duty?
Vitter	Backroom Deals	If confirmed, how do you plan to prevent the proliferation of wasteful lawsuits?
	Backroom Deals	At the confirmation hearing, Ms. McCarthy indicated that under the Clean Air Act, the agency is required to seek public comment on settlement agreements. Does EPA also seek public comment on settlement agreements that do not pertain to the CAA? Please identify all instances where the Agency has sought public comment on settlement agreements, not associated with the CAA.

	Backroom Deals	At the confirmation hearing, Ms. McCarthy indicated that there are additional opportunities for public interaction beyond the public comment on settlement agreements. Please identify these additional opportunities.
	Backroom Deals	At the hearing, Ms. McCarthy was asked if EPA had ever changed the terms of a settlement agreement in direct response to public comments. Ms. McCarthy responded that she did not know. Please respond for the record whether EPA has ever changed the substance of settlement agreements in response to public comments. Please identify every instance in which EPA changed the substance of a settlement agreement based on public comment and identify the change.
	Backroom Deals	EPA entered into a settlement agreement with WildEarth Guardians and the Sierra Club on regional haze. The states have since insisted that under the Clean Air Act, they should be the lead regulators on this matter. Did EPA consult with the affected states before the agency settled with the Sierra Club and WildEarth Guardians?
	Backroom Deals	At the hearing, in response to questions on regional haze, Ms. McCarthy stated that, "We worked very closely with States on regional haze issues, and we worked hard to make it a State implementation plan to the extent that we can." Yet, we know that EPA has rejected several state implementation plans. What are the limitations EPA faces that would lead the agency to reject a state implementation plan? If EPA is seeking to work with the states, why are these states currently suing EPA to challenge EPA's action on regional haze?
Vitter	BACT	BACT standards apply to individual sources on a case-by-case basis. They generally are more stringent – and by law may not be less stringent – than Clean Air Act new source performance standards (NSPS), which the EPA establishes for categories of industrial sources. In other words, NSPS are the “floor” or minimum emission control standards for BACT determinations. Is that correct?
Vitter	BACT	If BACT does not require fuel-switching, we should have no reason to expect that NSPS would require fuel switching or “redefine the source” to impose identical CO2 control requirements on coal boilers and on gas turbines. Is that correct?
Vitter	BACT	In their guidance establishing what could be considered Best Available Control Technology (BACT) for regulating GHGs in the permitting process, EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT: Since NSPS are traditionally interpreted to set the BACT “floor” for permitting purposes, how can a NSPS that eliminates the ability to construct new coal units without the implementation of commercially infeasible carbon capture and storage (CCS) be consistent with EPA’s previous guidance?

Vitter	BACT	<p>The Air Office's PSD and Title V Permitting Guidance for Greenhouse Gases, both as proposed in November 2010² and as adopted in March 2011, similarly states that the "initial list of control options for a BACT analysis does not need to include 'clean fuel' options that would fundamentally redefine the source." In other words, an applicant would not be required to "switch to a primary fuel type other than the type of fuel that an applicant proposes to use for its primary combustion process." In addition, a Q&A document published along with March 2011 guidance asks whether "fuel switching (coal to natural gas) should be selected as BACT for a power plant?" The document answers: "No." It goes on to state that BACT for CO₂ should "consider the most energy efficient design," but "does not necessarily require a different type of fuel from the one proposed." These documents suggest that the EPA will not require fuel switching in BACT determinations. Was that a reasonable conclusion for Congress and electric utilities to draw at the time?</p>
Vitter	best available science	<p>In most cases, the EPA is required to document a threat to public health or the environment before issuing a new regulation. But evidence abounds that the agency routinely relies upon speculative and poorly constructed computer models to justify its rulemaking. The Government Accountability Office, among others, has revealed serious shortcomings in the agency's scientific analyses. Unjustified regulations misdirect resources from real threats, and thus jeopardize public health and safety. What actions, if any, will you take to ensure that the agency applies the best science available through rulemaking?</p>
Vitter	Boiler MACT	<p>The final Boiler MACT and related Non-Hazardous Secondary Material (NHSM) rule published at the beginning of this year are a significant improvement compared to where EPA started and better than the December 2011 reproposal. EPA promised in the final NHSM to amend the list of non-waste fuels to include (1) paper recycling residuals, (2) processed construction and demolition wood, and (3) railroad crossties. We have been hoping EPA would start this supplemental rulemaking quickly given the existing, extensive record and new information provided since the rule was promulgated showing how EPA's criteria for listing have been met. However, EPA has not announced a schedule for this critical action. Facilities need to know very soon for compliance purposes whether materials they have relied upon in the past as important energy sources will remain fuels. Uncertainty or failure by EPA to act will result in facilities abandoning the use of high energy residuals and filling up landfill space and being replaced by fossil fuels; clearly not a good environmental outcome. When do you plan to start this supplemental rulemaking?</p>

Vitter	Bristol Bay	In response to petitions from environmental organizations to initiate a 404(c) veto process for a potential mine site in Bristol Bay before a permit application was submitted, EPA – pointing to its authority under CWA Sec. 104 – initiated a draft watershed assessment that involved the crafting of a hypothetical mining scenario in Bristol Bay. EPA has stated that the assessment will not have any legal consequences, but also that it is intended to provide a scientific and technical foundation for decision-making. How exactly does EPA intend to utilize this study under your leadership?
Vitter	Bristol Bay	EPA has full authority under the well-established Sec. 404 process to review any future permit application submitted to make a determination as to whether or not there will be any of the unacceptable adverse effects listed in CWA Sec. 404(c) at the disposal sites being considered by the U.S. Army Corps of Engineers, including unacceptable impacts to fishery areas and wildlife. Why, then, is EPA using its limited resources to conduct a watershed assessment on a hypothetical mining scenario that even EPA’s scientific review panel found did not accurately reflect the conditions of a real mine, rather than allow the companies that have invested millions of dollars to submit their proposal which EPA would then review?
Vitter	Bristol Bay	Why does the draft assessment only focus on two hydrologic units in the watershed and assume that such a small area is representative of a 40,000 square mile region?
Vitter	Bristol Bay	Why did EPA not note the risk assessment scenarios in their proper explanatory context, as they would have been in a typical risk assessment document?
Vitter	Bristol Bay	Why did EPA fail to address mitigation and impact avoidance or minimization actions that would undoubtedly be included in any actual mine plan?
Vitter	Bristol Bay	What impact do you think EPA’s actions with respect to Bristol Bay will have on investment in U.S. property and natural resource development?
Vitter	Bristol Bay	Has EPA considered the positive environmental justice impacts high-paying jobs and tax revenue will have on the region?

Vitter	CAA General Duty Clause	<p>Section 112(r)(1) of the Clean Air Act is commonly used in EPA enforcement actions as a “General Duty” provision. It requires owners and operators of stationary sources of emissions to identify and prevent accidental releases of hazardous substances. Although the section states that “it shall be the objective of the regulations and programs authorized” under 112(r) to prevent accidental releases and to minimize the consequences of any such release, EPA has yet to issue any regulations or enforcement directives identifying what is expected of these sources. In recent years, EPA has increasingly used the General Duty provision to impose substantial penalties on facilities. This situation has created uncertainty for industry, leaving questions about the consistency of how compliance is measured and when compliance has been achieved. In addition to this uncertainty, certain interest groups are now calling on EPA to use the provision to regulate chemical facility security, regardless of the fact that the subsection is clearly limited to “accidental releases.” Furthermore, in the Homeland Security Appropriations Act of 2007, Congress explicitly assigned jurisdiction over security to the Department of Homeland Security (DHS). What is your position on EPA’s role in regulating chemical facilities using the General Duty Clause? Do you believe that legislation is needed to clarify the use of the clause as well as ensure its proper application by affirming that jurisdiction of chemical facility security remains with DHS, as Congress intended? Why or why not?</p>
Vitter	Carbon Capture and Storage (CCS)	<p>EPA makes several statements and assumptions regarding CCS in the proposed standards, and proposes that new coal fired units could comply with the rule through a 30 year “averaging” option that would allow them to deploy CCS in year 11 of operation and average their emissions over a 30 year span: While conceding that CCS does not meet the requirements of BSER, EPA claims that CCS is an available compliance option. In your estimation, is CCS commercially feasible today?</p>
Vitter	Carbon Capture and Storage (CCS)	<p>Are there any CCS plants that are deployed and demonstrated on a large scale?</p>
Vitter	Carbon Capture and Storage (CCS)	<p>EPA has stated that the proposed GHG NSPS will promote the development of CCS in the United States. How do you expect the rule to do so?</p>
Vitter	Carbon Capture and Storage (CCS)	<p>Is there an existing and robust transportation pipeline system available to handle the CO2 captured by CCS?</p>

Vitter	Carbon Capture and Storage (CCS)	Similarly, is there a legal and regulatory framework available to handle the sequestration of CO2 captured through CCS? Is there a liability and insurance framework in place?
Vitter	Carbon Capture and Storage (CCS)	In what year do you expect CCS to be commercially viable, given current funding?
Vitter/Boozman	carbon neutrality	In a reversal of precedence and established practice, EPA in the GHG Tailoring Rule, between proposed and final and without opportunity for public comment, treated biomass the same as fossil fuels rather than recognizing that biomass actually recycles carbon and does not increase carbon in the atmosphere. A partial recognition of this mistake was the 3-year deferral by the Agency of the regulation of biomass under the Tailoring Rule to review the science and policy. While an EPA convened Clean Air Act Science Advisory Board Panel submitted recommendations, these suggested remedies are complex, difficult to implement, and again unnecessary. So as to not miss the end of the deferral period in June of 2014 and inadvertently keep a flawed policy change in place, a final policy consistent with the science that encourages biomass as an energy source and accounts for the natural recycling of the biomass carbon is necessary. Can you imagine a scenario whereby EPA would not recognize the well-established science supporting the carbon neutrality of biomass combusted for energy by forest products manufacturers and others? As EPA Administrator, will you work with me and all affected industries to ensure that renewable biomass remains a carbon neutral fuel, and as such, receives favorable treatment in the permitting program?
Vitter	Carbon Tax	Do you or will support a carbon tax? More specifically, what is your sentiment with respect to the Boxer-Sanders bill?
Vitter	Carbon Tax	Can you comment on Australia's experience with a carbon tax?
Vitter	GHG	We have all heard the claims that if the US acts then other countries will follow. Can EPA provide this committee with examples of specific countries that will follow the US lead if the US adopts more stringent regulations on existing power plants?
Vitter	GHG	If all the regulations enacted or being contemplated with respect to greenhouse gases are fully implemented, what the impact be on global concentrations of greenhouse gases and on global average temperature? Please cite your sources.
Vitter	GHG	If the US has committed to a specific course of action through regulations, what leverage would U.S. diplomats have to craft international compromises on climate issues?

Vitter	CBA	In March of 2011 EPA released a report: “The Benefits and Costs of the Clean Air Act from 1990 to 2020” that estimated that the monetized benefits of CAA regulations would be 2 trillion dollars annually by 2020 with cumulative benefits reaching \$12 Trillion. Nearly all of the benefits came from avoiding 230,000 premature deaths annually in 2020 due to reductions in fine particulate emitted into the air we breathe. EPA stated that monetized benefits exceed costs of compliance by a 30 to 1 factor. What value did EPA use for a premature death avoided (PDA)? How was that value determined? Just how long was the PDA avoided? Was the same benefit used regardless of the time period of avoided mortality? Did the National Research Council suggest in a 2008 report to EPA that it was more appropriate to use of the value of statistical life years (VSLY) saved for determining a value of a PDA? Did EPA incorporate that recommendation?
Vitter	Chemical Action Plans	The Office of Chemical Safety and Pollution Prevention has been engaged in negotiations with industry to develop an enforceable consent agreement for an environmental monitoring program of the effluent of octamethylcyclotetrasiloxane (D4). We understand the Agency has recently advised the industry stakeholders that it will submit the draft agreement to “peer consultation.” We are troubled by this proposed action as it does not afford the protections of a formal peer review to interested parties. This could be a very one-sided process and give the Agency the ability to claim the need for a far more extensive and unnecessarily expensive monitoring program. Will you commit to either abandon the peer consultation proposal or elevate it to an independent formal peer review by the Agency’s Science Advisory Board or an equivalently independent body?
Vitter	Chemical Management	For chemicals management, the Agency has traditionally used an approach where the risks associated with a chemical are systematically evaluated first. If risks are identified that merit the introduction of risk management intervention, EPA separately assesses risk management instruments that would be the most appropriate. Will the Agency continue to use this tiered approach where risks are assessed separately from consideration of the need for risk management? Some regional regulatory authorities, most notably the Europeans, are increasingly using hazard as the basis for proposing regulatory restrictions for industrial chemicals. This appears especially the case for controversial human health endpoints, such as endocrine activity, where the science is still evolving. Will EPA continue to use risk as the basis for regulating industrial chemicals?
Vitter	Coal Ash	The Agency proposed a coal combustion residuals (CCR) rule in 2010, and that rule has not been finalized. At the same time EPA has made a commitment to propose revised effluent guidelines for the steam electric industry by April 19 and then finalize the guidelines by May 2014. How does the Agency plan to ensure coordination between these two rules, which involve many of the same wastestreams?

Vitter	Coal Ash	EPA is still considering two regulatory options for coal ash – the first would regulate coal ash under RCRA’s Subtitle C hazardous waste program and the second would regulate coal ash as a non-hazardous waste under RCRA’s Subtitle D program. Both options have their drawbacks, especially in my view the Subtitle C option, and EPA has received approximately 450,000 comments on the proposal identifying major shortcomings with both approaches. Given this, last year the Senate introduced bi-partisan legislation (S. 3512) that would establish federal non-hazardous waste standards for the management of coal ash under RCRA Subtitle D. I expect similar legislation to be introduced shortly in the House. The legislation draws from the key components of EPA’s proposed Subtitle D regulatory proposal and would allow the States to take the lead in implementing enforceable permit programs for coal ash, with EPA ensuring that State programs meet the federal standards or, if not, EPA would implement and enforce the federal controls for coal ash. In light of the controversy surrounding EPA’s regulatory options, would you support federal legislation along the lines of S. 3512 that would create a federal regime for the management of coal ash? What would be the key criteria that EPA would like to see in federal legislation for coal ash? Do you agree with the views of ECOS, ASTSWMO and individual state agencies that the states are up to task of implementing federal controls for coal ash?
Vitter	Coal Ash	Suzanne Rudzinski, Director of the Office of Resource Conservation and Recovery, on Oct. 11, 2012, documented in a declaration to the U.S. District Court for the District of Columbia in <i>Appalachian Voices v. Jackson</i> (Civ. No. 1:12-cv-00523-RBW) why the agency could not promulgate a final rule on the disposal and management of coal combustion residuals in surface impoundments and landfills in the six-month timeframe requested by plaintiffs. Ms. Rudzinski told the court that EPA could not meet that deadline because “such a schedule does not provide EPA with the time necessary to allow sound-decision making, and would result in final agency actions that, in [her] view, are neither scientifically sound nor legally defensible.” EPA’s semi-annual regulatory agenda provides no projected date for completion of this rulemaking. What are EPA’s plans for issuing a final rule? Specifically, what are the major actions EPA plans to complete prior to issuing a final rule and the projected deadlines for completing those actions (i.e., plans for issuing a notice of data availability or any other rulemaking steps requiring public comment)?
Vitter	coal ash	can you assure us that EPA will not define coal ash as a hazardous waste?

Vitter	coal powerplant closings	A large number of plants are expected to retire in 2015/16 – as the economy recovers and electric demand recovers. Experts expect regional problems because there are areas not served by natural gas pipelines where needed infrastructure may not be able to be put in place in this time frame or where replacement plants cannot be permitted and built within this time frame. MISO has done an analysis that shows 9% of capacity (12.9 GW at last estimate) is closing and there is probably not sufficient gas infrastructure to serve existing demand let alone new demand. Did EPA examine natural gas availability when you issued the Utility MACT rule, CSAPR, the PM NAAQS and NSPS for GHGs?
Vitter	coal powerplant closings	EPA has not done a cumulative analysis of the impact of its many recent regulations affecting power plants. There has been no government analysis by any government agency of which plants are closing, where they are located and whether or not the area has natural gas infrastructure in place or can be supplied with additional supplies of natural gas in existing infrastructure. Certain sections of the country are very coal dependent while others have little coal generation. Ten states depend on coal for over 70% of generation; 11 states are 50-70% dependent. These states will experience disproportionate impacts including higher costs. Is this something EPA examined? Does this concern you?
Vitter	coal powerplant closings	Have EPA regulations played a role in the premature closing of coal-fired powerplants?
Vitter	coal powerplant closings	Bloomberg Government recently put together a comparison chart of various estimates of plant closures made by government agencies and private financial firms and other experts. EPA's estimate in December 2011 of plant closures resulting from EPA's regulation at 17.5 GW. The EIA estimated 49 GW in July 2012, most of it within 5 years but put the overall range at 34 GW to 70 GW. Other private sector groups have estimated coal plant closures at 34.5 GW to 77 GW. Is it concerning to you that EPA's estimate constitutes such an outlier?

Vitter	coal powerplant closings	<p>EPA regulations and low natural gas prices are leading many utilities to fuel switch from coal- to natural gas-fired generation. However, it is not clear yet whether there will be sufficient pipeline infrastructure or storage to accommodate the greater use of natural gas by electric utilities. And as is evidenced in your home region of New England, a region heavily reliant on natural gas for electric generation, there are issues with pipeline capacity and competing demand for gas for home heating. Electricity prices in New England were four to eight times higher than normal in February 2013 because of the lack of fuel diversity. And New England is not the only region of the country with potential reliability concerns. A January 2013 EPA Compliance Update by the Midwest Independent System Operator (MISO) states the ISO has concerns about whether there is sufficient resource adequacy in the Midwest beginning in 2016. With the significant number of coal-fired generation retiring due to EPA regulations and low natural gas prices, MISO projects there will be a potential 11.7 GW shortfall of resource adequacy in the winter of 2016 and a 3.5 GW one in the summer of 2016. MISO anticipates increased utilization of natural gas fuel generation that will result in “changes to the system’s generation configuration and concerns about the ability of the current pipeline infrastructure’s ability to deliver enough gas.” Do you agree that EPA environmental regulations are now driving U.S. energy policy with serious implications for electric reliability and electricity prices? Is EPA working closely with the Federal Energy Regulatory Commission to ensure the reliability of the electric grid and smaller load pockets facing potential generation shortfalls? Can you please provide the committee with specific information about inter-agency meetings on these issues?</p>
Vitter	coal powerplant closings	<p>As you may be aware, the Federal Energy Regulatory Commission (FERC) is examining how to promote greater coordination between the electricity and natural gas industries. The Commission has held five technical conferences on this issue and plans to hold another in April. The one thing that is clear from all these conferences is that no one knows whether all the changes needed for fuel switching from coal- to natural gas-fired electric generation on this scale can be accomplished in the time needed to comply with EPA regulations. What involvement, to date, has EPA had with FERC on these technical conferences? Has the agency considered providing utilities with more time to comply with regulations (by perhaps providing larger spacing between regulations) in order to allow the infrastructure upgrades and market reforms (e.g., synchronization of scheduling between electricity and natural gas markets) needed to enable this massive amount of fuel switching?</p>

Vitter	coal powerplant closings	During extreme weather conditions – whether cold, hot or hurricane – there is great value in a “coal pile” that can be deployed at those times. If it were only market conditions, or the current lower price of natural gas, coal plants would not close – utilities would simply run gas plants more, run coal plants less but keep them in the generation mix for future needs. Electric reliability is challenged during exactly these weather related events. Are you concerned that a major emergency back-up resource– that “coal pile” – will not be available in future weather emergencies?
Vitter/Boozman	cooperative federalism	Can you remember any instance in which EPA has disagreed with a State’s approach on an environmental issue and ultimately decided that the State was correct?
Vitter	CSAPR	On March 29, 2013, the Department of Justice filed a cert petition asking the Supreme Court to reverse the decision by the D.C. Circuit striking down EPA’s Cross State Air Pollution Rule (CSAPR). This cert petition makes certain claims about the impact of the Court’s decision that appear to be inconsistent with statements that you recently made to the U.S. General Accountability Office (GAO). In a letter dated January 7, 2013, to David Trimble of the GAO, you stated as follows: Annual 2012 SO2 emissions levels from power plants within the CSAPR region are on track to be 23% below what CSAPR would have required in 2012. Similarly, annual NOx and ozone season NOx emissions in the CSAPR region are projected to be 12% and 5% below what CSAPR required for 2012." Yet the cert petition to the Supreme Court asserts that “By vacating the Transport Rule [CSAPR], . . . the court of appeals’ decision will directly and negatively affect the public health.” How does the court of appeals’ decision “directly and negatively affect the public health” if emissions from power plants are well below the levels that would have been required under CSAPR?
Vitter	CSAPR	Do you believe that EPA and the Department of Justice have an obligation to be forthright and honest with the Supreme Court? Do you agree that, at the very least, the statements in the cert petition regarding the public health impacts of the CSAPR decision could be misleading?
Vitter	CSAPR	In CSAPR, EPA originally proposed that Texas would not be covered under the rule because power plants in Texas did not “contribute significantly” to nonattainment problems in other states. In the final rule, however, EPA changed its mind and asserted that emissions from Texas would contribute just over one percent of the problem with projected PM2.5 concentrations at one air monitor in Illinois. As a result of this new projection, EPA issued a final rule that required substantial and costly emission reductions in Texas. In fact, emission reductions required in Texas amounted to more than 25 percent of the total SO2 reductions in CSAPR. Do you believe that EPA overreached by imposing such a substantial burden on Texas in the final rule? When trying to regulate interstate transport of emissions, do you agree with the D.C. Circuit that EPA can only regulate to the extent necessary to eliminate a state’s contribution to downwind nonattainment?

Vitter	CSAPR	Do you anticipate proposing a replacement rule for CSAPR? Will EPA ensure that states and utilities are given adequate time to comply with the rule?
Vitter	CSAPR	What lessons have you learned from the CSAPR experience?
Vitter	CSAPR	Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements? When does EPA expect to decide?
Vitter	CSAPR/CAIR	EPA had determined that electric generating units in the East that were subject to the CAIR program did not have to comply with regional haze best available retrofit technology (BART) requirements because CAIR would reduce emissions more than BART. When EPA replaced CAIR without CSAPR, it revoked the determination that compliance with CAIR constituted compliance with BART, and instead determined that compliance with CSAPR constituted compliance with BART. But now CSAPR has been overturned in court. Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements on a source by source basis? When does EPA expect to decide?
Vitter	Cumulative Analysis	When will EPA produce a full analysis of the impacts of all of its power sector regulations?
Vitter	321(a)	In EPA's Utility MACT proposal, EPA stated that: "EGUs are the subject of several rulemaking efforts that either are or will soon be underway. . . . EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies." So, EPA recognizes that it needs to approach these rulemakings, to the extent that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health benefits that the rulemakings must achieve. The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings. The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking. Does EPA intend to follow through on this commitment and provide a forum in which EPA notifies utilities of all of the impending power sector regulations and discusses ways for

		industry to comply with all of these regulations in a least cost fashion?
Vitter/Boozman	CWA	In section 402(p) of the Clean Water Act, Congress established a procedure that requires EPA to give Congress the opportunity to fully review and analyze EPA's rationale for expanding the federal regulation of stormwater before taking any regulatory action. For instance, the 402(p) report to Congress justifying the 1999 Phase II expansion of the stormwater regulations was submitted to Congress in 1995 – four years before the regulations were finalized. Will EPA follow that procedure for the stormwater rulemaking the Agency is currently working on? What is your anticipated schedule for delivery of the 402(p)5 report to Congress justifying any new post-construction stormwater regulations and how does that compare to your anticipated release date for the draft regulation itself for Public Comment?
Vitter/Boozman	CWA	The recent federal District Court decision in <i>Virginia Dept. of Transportation v. EPA</i> (which concerned the Accotink Creek in northern Virginia) held that the Clean Water Act limits EPA's regulatory authority to “pollutants” rather than water flow and EPA chose not to appeal the case. Do you believe EPA presently has any authority to regulate the flow of water? Do you believe that EPA can control the volume, velocity or any other characteristic of stormwater that is discharged from a point source, without directly relating those characteristics to a specific level of a specific pollutant that is in that stormwater?

Vitter/Boozman	CWA	We understand that a draft rule intended to clarify the Clean Water Act's definition of "Waters of the United States" will soon be transmitted to OMB for review. Given how far-reaching and significant this regulation would be, will you commit to at least a 120 day notice and comment period for this rule to ensure an adequate amount of time for the public to engage in this process? Will you agree to withdraw the Guidance document currently being reviewed by OMB once a draft rule is sent to OMB?
Vitter/Boozman	CWA	The 8th Circuit (in <i>Iowa League of Cities v. EPA</i>) recently joined a long line of courts that have held that EPA has no authority under the Clean Water Act to regulate the source of pollution. Congress only delegated to EPA the authority to regulate the <u>discharge</u> of a pollutant. This means that EPA can set permit limits for discharges but cannot specify how to meet them. Will you commit that EPA will not propose any regulation that would attempt to impose specific control requirements on land, buildings or other sources of runoff, upstream from a discharge into water?
Vitter/Boozman	CWA	EPA's current municipal stormwater regulations only regulate stormwater flows from municipal storm sewers into waters of the U.S. The discharge <u>from</u> the municipal system is a validly regulated point source, but the runoff <u>into</u> the municipal system is nonpoint source stormwater flow. Do you believe that EPA has Clean Water Act authority to regulate the flow of runoff into a storm sewer?
Vitter/Boozman	CWA Permits	According to Justice Scalia in the Supreme Court's <i>Rapanos</i> decision, the average applicant for an individual Clean Water Act permit spends 788 days and \$271,596 in completing the process, and the average applicant for a nationwide permit spends 313 days and \$28,910 -- not counting costs of mitigation or design changes. What has EPA done to reduce these regulatory costs? And what you intend to do as EPA Administrator to further lessen this onerous burden faced by regulated parties?
Vitter	Definition of Fill Material	The current definition of fill material, finalized in May, 2002, unified the Corps and EPA's prior conflicting definitions so as to be consistent with each other and the structure of the CWA. The current rule solidifies decades of regulatory practice, and includes as fill material those materials that, when placed in waters of the U.S., have the effect of raising the bottom elevation or filling the water. However, both EPA and the Corps have stated that they are now considering revising the definition of fill material. What is EPA's rationale for revisiting the well-established division of the Sec. 402 and Sec. 404 programs?
Vitter	Definition of Fill Material	What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?
Vitter	Definition of Fill Material	Has EPA yet considered the time and costs associated with making such a change to the two major CWA permitting schemes – Secs. 402 and 404?

Vitter/Boozman	E15	In February 2013, the President of the American Automobile Association testified before Congress that the introduction of E15 to commerce was done “without adequate protections to prevent misfuelings and despite remaining questions about potential vehicle damage.” In further testimony, he suggested that testing of E15 was far too narrow in scope and that sales should be suspended until further study is done on the potential full impact of E15 on all aspects of vehicles and appropriate. Do you believe testing on E15 should have included potential impacts on engine life and fuel pumps? Do you stand by EPA’s conclusion that E15 is safe and reliable for consumers to use?
Vitter	E15	Through its waiver, EPA has concluded that E15 “will not cause or contribute to the failure of engines or vehicles.” If you stand by EPA’s conclusion, would you support legislation requiring the federal government should indemnify companies that sell e15 from any future liability related to the use of E15 in motor vehicles and motor vehicle engines?
Vitter	E15	When the RFS was passed, gasoline demand was projected to increase for the foreseeable future. Now, gasoline demand is flat or declining for the foreseeable future. Even if more E15 were used in the marketplace, there would not be enough room in the fuel supply, particularly given new CAFÉ standards. How does EPA plan on addressing this conflict between mandated ethanol volumes and decreasing fuel demand due to the Administration’s CAFÉ standards?
Vitter	E15	Many auto companies are actually warning consumers against using E15 even in EPA-approved vehicles and AAA is warning consumers not to use it. What does EPA know that the auto companies don’t?
Vitter	E15	Did EPA look at any testing data other than emissions before approving E15?
Vitter	E15	Was EPA aware of ongoing CRC testing on engine durability, fuel pumps and other engine components? Why not wait until that test was complete before making a decision? Because in the aftermath it looks like the decision was, at best, premature. The CRC data shows millions of approved vehicles are in danger of engine damage.
Vitter	E15	How many stations are carrying E15? How is EPA ensuring compliance with the labeling requirement? Recent reports show that as many as 1/3 of stations carrying e15 are not properly labeling it.
Vitter	E15	At what point should we conclude the mandate is causing significant harm?
Vitter	E15	What was the rate of consumer misfueling during the switch from leaded to unleaded gasoline? Why didn’t EPA promulgate stricter misfueling mitigation requirements like it did during that time- or even the more stringent warning label (considering that was the only misfueling mitigation measure EPA is requiring)?
Vitter	E15	What is the status of an ANSI standard for E15?

Vitter	E15	Why is EPA suggesting an E15 cert fuel in the Tier 3 rule, considering one of the justifications is to harmonize regulations with the State of California, which certifies to E10? Is this a way to force automakers to build cars to use fuels that may or may not be commercially available?
Vitter	E15	Given the number of issues with E15, not the least of which is liability, why does EPA think half of the fuel consumption will be E15 in 2017?
Vitter	E15	The majority of gas stations are single store operators, and more than 90 percent are independent from refineries. Why would these small businessmen take on potential liability to sell a fuel that can only be used in less than 5 percent of vehicle (those certified by manufacturers to use E15 or FFV) and no other type of engine?
Vitter	316(b)	Despite guidance from OMB, EPA frequently does not assess the cumulative economic impact of regulations on the regulated community. For example, although EPA touts the cumulative benefits of its Clean Air Act regulations, each regulatory proposal under the Act is only assessed for its particular costs and impacts. Will you commit to ensuring that EPA does a better job assessing the cumulative impacts of regulatory proposals, including impacts on U.S. competitiveness?
Vitter	316(b)	EPA is required by statute to evaluate the costs and benefits of each regulation. For cooling water intake structures Clean Water Act Sec. 316(b) regulations, EPA's own analysis states costs 20 times greater than the expected benefit. To justify the imbalance between costs and benefit the EPA provides all kinds of caveats calling the analysis incomplete and the costs overstated. The agency is required to conduct these analyses in a way that supports sound decision-making when setting standards. Such a gap between costs and benefits is troubling – especially for those in rural America and other economically disadvantaged communities who will ultimately be paying for these changes. Does this analysis reflect the state of EPA's science and if not, what steps will EPA take to redo the analysis so that it accurately reflects the cost and benefits before making any policy decision and before issuing any proposed or final regulation?
Vitter	EDSP Chemicals	It is my understanding that endocrine screening results have been submitted to EPA on about 50 pesticide chemicals. What has been EPA's experience with the Endocrine Disruptor Screening Program (EDSP) to date? How is EPA applying a weight of evidence approach to screening level results to determine whether the chemicals need to go on to higher tiered endocrine testing?
Vitter	EDSP Chemicals	I understand EPA is conducting an evaluation of how well the EDSP Tier 1 screening methods and Battery actually performed. If certain methods are found to be flawed or aren't performing adequately, will EPA make the necessary adjustments to the methods or test Battery before requiring additional substances to undergo EDSP Tier 1 screening? What challenges does EPA see in this next phase? What lessons has EPA drawn from its implementation of the EDSP program to date?

Vitter	EDSP Chemicals	EPA's endocrine disruptor regulatory program is risk based, which allows EPA to set safe levels of exposures based on a determination of both hazard and exposure. Do you agree that a risk-based approach is more scientifically sound than a hazard based approach? Do you think this approach provides EPA adequate authority for addressing the "endocrine disruptor" issue?
Vitter	Endangerment Finding/ Peer Review	In 2009, EPA determined in its Endangerment Finding that carbon dioxide and related substances pose a danger to human health and welfare. EPA made this determination without the peer review of the Scientific Advisory Board, a panel of independent scientists whose function is to ensure the scientific credibility of EPA's Clean Air Act proposals. What explains EPA decision to impose such a draconian regulation without complying with its statutory duty of scientific peer review?
Vitter	Energy Recovery	EPA has for years maintained that reduction, reuse, recycling and recovery are all preferable to landfill disposal. For municipal waste that cannot be recycled (due to food contamination, or other reasons) recovery is better than disposal. New and emerging technologies are enabling the production of a variety of clean, renewable fuels and energy from non-recycled plastic in municipal solid waste, and communities across the country are taking integrated approaches to increase recycling and maximize the energy value across the entire municipal waste streams. We hope we can count on EPA's leadership to find ways to ensure that these potentially significant domestic energy sources are not wasted in landfill, but instead treated as the renewable fuels that they are. Do you agree that energy recovery from non-recycled plastics and other waste streams is an underutilized resource? Will you consider appropriate changes to EPA's regulatory programs to do a better job of promoting energy recovery across many different industries and processes? Will you commit to work with the Committee to give energy recovery a proper place in a true "all-of-the-above" energy strategy?
Vitter	Energy Star	Why, after being warned of the problem by the EPA's Office of Inspector General, did you allow so many products to be labeled as ENERGY STAR appliances devices even though they weren't among the more efficient ones?

Vitter	Enforcement Audits	It is my understanding that EPA's Office of Enforcement and Compliance Assurance (OECA) is considering eliminating EPA's "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Audit Policy) in an effort to deploy its enforcement resources to address more significant noncompliance issues. This would be a grave mistake as the Audit Policy, which has been in place since 1995, is one of the most successful voluntary programs that the Agency has implemented. The Audit Policy encourages regulated entities to voluntarily discover, and promptly report and correct violations of federal environmental requirements that are not otherwise required to be reported. This Policy has resulted in significant benefits both in terms of protection of human health and the environment and in the development of more comprehensive and sophisticated environmental compliance programs by industry. The Audit Policy does not require a lot of EPA resources. In fact, the Policy requires little of OECA other than a decision, or not, to investigate further the voluntary notifications of noncompliance that it receives. Do you agree that the Audit Policy is an important program? As Administrator will you commit to preserve the Audit Policy so that the beneficial effects of this Policy continue to be achieved? OECA decisions to review or take action under the Audit Policy are discretionary and nothing requires OECA to follow-up on each and every notification it receives. What steps should OECA take to be more judicious and reduce the number notifications it reviews or follow-up actions it takes?
Vitter	Environmental Justice	Thinking about environmental justice issues for a minute, why is EPA issuing "papers" proposing changes to policies that were initially published in the Federal Register? What has changed that justifies this significantly less-transparent approach?
Vitter	Environmental Justice	The "Role of Complainants and Recipients in the Title VI Complaints and Resolution Process" paper leaves an important stakeholder out of the arbitration process as EPA merely proposes negotiations between complainants and the state permitting agencies who receive federal funding. The actual permit holders are not just excluded from negotiations – there is no requirement they even be notified that a complaint has been filed. Shouldn't EPA require both notification and inclusion of all stakeholders potentially affected by a Title VI complaint?
Vitter	Exceptional Events	The ability for states to develop approvable implementation plans or other submissions, such as Exceptional Events demonstrations, has been hindered by: EPA's inability to provide timely guidance; undefined processes that do not clearly establish the criteria EPA will use to evaluate submissions; and, in some cases, the lack of a dispute resolution processes. If confirmed, what are your plans to correct these deficiencies?

Vitter	SSM	The ability for states to develop approvable implementation plans or other submissions, such as Exceptional Events demonstrations, has been hindered by: EPA's inability to provide timely guidance; undefined processes that do not clearly establish the criteria EPA will use to evaluate submissions; and, in some cases, the lack of a dispute resolution processes. If confirmed, what are your plans to correct these deficiencies?
Vitter	FIFRA	Under your direction, would EPA seek to improve the pesticide consultation process with the Services (Fish and Wildlife and National Marine Fisheries) mandated under section 7 of the Endangered Species Act? In order to improve this process, how would you guide the agency to ensure actions are taken to be consistent with the statutory mandate to use the best available information in regulatory decisions regarding pesticide reviews and registrations?
Vitter	FIFRA	What are the costs (in dollars and time) to EPA headquarters and regional offices related to the implementation and enforcement of the Pesticide General Permit (PGP) under the National Pollutant Discharge Elimination System (NPDES)? In a time of limited resources, how would you seek to manage these requirements while being judicious with available resources?
Vitter	FIFRA	What do you see as the appropriate balance between a science-based risk assessment and precaution in making decisions about pesticide approvals under FIFRA? Explain how you would defend EPA's support and implementation of risk assessments against international regulatory authorities who favor a hazard-only based precautionary principle (e.g. the European Union)? What are your views on how best to consider impacts to international trade when make regulatory decisions?
Vitter	FIFRA	Will you support an EPA response to argue against the European Union's prohibition on neonicotinoid insecticides?
Vitter/Boozman	FIFRA	The government spends millions of dollars on water monitoring that is not used by the EPA Office of Pesticide Programs during the risk assessment process for the registration of pesticides. In general, EPA not using this real-world monitoring data leads to the Agency relying on modeling that over-estimates the potential human exposure to pesticides from drinking water. Being protective is good, but being over-precautionary can have the unintended consequence of eliminating safe uses of pesticide thus driving up the cost of production and limiting the pest control options for farmers and other users. What would you do to ensure that EPA risk assessments as accurate as possible and based on the best available information, while balancing the protection of human health with the needs of agriculture and food/fiber production?
Vitter/Boozman	FIFRA	Does it make sense to regulate pesticides in water runoff as a Clean Water Act program when FIFRA is the congressional statement on the extent of pesticide regulations? Why not consider that pesticides, used in compliance with FIFRA, are not pollutants under the CWA?

Vitter	FOIA	Will EPA commit to aligning its FOIA redaction practices with DOJ guidelines?
Vitter		What assurances can you give us that your agency will not continue to stand in the way of the new energy related jobs and the creation of more domestic energy here at home?
Vitter	General	What is the communication between stationary and mobile source emissions staff? How do you reconcile requirements to produce new fuels (such as the proposed Tier 3 gasoline sulfur reduction) with requirements to reduce emissions at refineries? Are these contradictory or do you believe that both can be done? For example, don't gasoline sulfur reduction processes increase refinery greenhouse gases, Nitrogen Oxides and Particulate Matter emissions?
Vitter	GHG	President Obama stated that if Congress doesn't adopt climate change legislation he finds acceptable then executive actions will be taken to address climate change. What regulatory options are under consideration by EPA to fulfill this promise, given that the President identified actions that would be taken "now"?
Vitter	General	A cursory look at the some of the largest rules that you have issued or proposed in your tenure at EPA suggests that your office has imposed between \$300 to \$400 billion dollars per year in higher costs on American businesses and consumers. Could you provide this Committee with an estimate of the total annual costs of all the rules you have proposed and finalized since becoming Assistant Administrator for Air and Radiation? How do you think these costs impact the ability of American firms to compete internationally? How do you think these costs impact the price of goods for people who are struggling to get by?
Vitter	General	How many of EPA's significant rules in the last four years have had to be reconsidered and revised after promulgation of the final rule?
Vitter	Independent Peer Review	The office of the Scientific Advisory Board (SAB) is located inside the Administrator's office and my understanding is that the Administrator actually oversees and approves the selection of SAB and CASAC officials. Is this correct? Do you see an inherent conflict of interest in having EPA select and approve its own peer review committees? Isn't it possible that the selection is likely to reflect people who have general views that are congenial to the way EPA approaches the science? Wouldn't it be better to have officials outside EPA select peer review panels for significant rules, such as NAAQS?
Vitter	General	If confirmed, do you plan on continuing with EPA's Design for the Environment Safer Product Labeling Program? In what ways do you believe this has been a valuable program for the manufacturing community?
Vitter	General	The DfE process for certification under the Safer Product Labeling Program is often criticized by many as costly, cumbersome and extremely slow. What would you do as EPA Administrator to make the

		process more efficient and cost-effective?
Vitter	General	The DfE Safer Product Labeling Program requires review and approval of a product's composition by a third party. It is my understanding that DfE contracts with two companies to conduct these reviews. Is there a process to re-qualify these organizations? Doesn't the current format of exclusive reviews by just two companies unfairly exclude other prospective reviewers? What, if anything, would you do to address this apparent monopoly that has been created by the EPA?
Vitter	General	Last year, EPA's DfE program published a list of "safer chemicals" on its website as part of its Safer Product Labeling Program. What types of review has the Agency undertaken to classify these chemicals as "safer"? What criteria are used in these reviews? Is there opportunity for public review and comment on the list prior to its publication? Are chemicals not listed as "safer" unsafe for use as intended?
Vitter	General	What challenges is the DfE Safer Product Labeling Program facing?
Vitter	GHG	How do U.S. greenhouse gas emissions compare to other countries on an apples-to-apples basis, such as the ratio of emissions to GDP? What is an acceptable amount of greenhouse gas emissions annually for the United States?
Vitter	GHG	You previously co-authored a paper which stated that "the location of CO2 emission reductions is irrelevant in reducing global emissions of this pollutant". Do you still agree with this assessment? If so, where do you think the most cost-effective emission reductions can be made in the world?
Vitter	GHG	The two states where you worked and developed environmental regulations for the electric power sector have the most expensive power in the Nation. I understand that during your tenure in these states that you pursued the adoption of the first ever plant-by-plant CO2 limits and the first ever CO2 cap-and-trade program. Do you think these policies contributed to the very high cost of power in these States? Can you please outline the specific environmental and health benefits realized in these States that have resulted solely from reducing CO2 emissions as a result of these programs? As EPA Administrator do you intend to pursue similar programs on a national scale?
Vitter/Boozman	GHG	After addressing greenhouse gas emissions in the motor vehicle and utility sector, do you have a plan for addressing GHG emissions in the rest of the economy? You have said EPA plans to focus on the biggest emitters first. Have you prioritized which industries you intend to address after motor vehicles and the power sector?
Vitter/Boozman	GHG	EPA has been petitioned to regulate GHG emissions from animal feeding operations. Can you assure us that EPA won't regulate GHG emissions from any agricultural facilities during the second term?
Vitter	GHG	EPA has been petitioned to regulate GHG emissions from coal mines. What are your plans with

		respect to such a petition?
Vitter	GHG	EPA has been petitioned to establish National Ambient Air Quality Standards (NAAQS) for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs?
Vitter	GHG	Has EPA done any analysis of the value of diverse energy sources as a basis for energy independence?
Vitter	GHG	Why hasn't EPA studied the cumulative impact of all its recent rulemakings which are causing the retirement of coal fired energy sources?
Vitter	GHG	EPA's own data in relation to various carbon reduction plans continuously indicates reducing GHG emissions domestically will have no impact on worldwide emissions. In fact, US emissions are now below 2005 levels and have been flat or declining for nearly 12 years now. This has all occurred without cap-and-trade and, until the last few years, any other GHG regulations. In light of these facts, why do you feel the Agency still needs to move forward with its GHG regulations under the Clean Air Act?
Vitter	GHG	In addressing the need for unilateral, domestic GHG reductions, regardless of what the rest of the world does, the Administration has historically said that we need to be "leaders" in this arena to encourage other nations to follow. The U.S. has had some sort of GHG regulation in place since 2007, ranging from the GHG requirements in the RFS, to EPA's GHG regulations for stationary sources under the Clean Air Act, to two stages of CAFÉ and GHG tailpipe standards. How has leading through such actions to control GHGs caused China, India or other developing countries to "follow our lead" in reducing GHG emissions?
Vitter/Boozman	GHG	The EPA's greenhouse gas regulations, along with a host of other onerous regulations, are unnecessarily driving out conventional fuels as part of America's energy mix. The consequences are higher energy prices for families and a contraction of our nation's economic growth for no noticeable impact on the earth's temperature as major developing countries like India and China repeatedly have said they would not cut economic growth to curb GHG emissions. Do you agree with former EPA administrator Lisa Jackson that unilateral actions on greenhouse gas emissions will not significantly impact global emissions and thus have a negligible effect on climate change?

Vitter	GHG Regs CBI	Under EPA's Mandatory Reporting Rule for GHG Emissions, EPA has developed a timeframe for categories of GHG emitters to report GHG emissions data. Some companies are currently working on submitting 2012 GHG emission data to EPA and others are on a deferred schedule. EPA issued a memorandum dated December 17, 2012 (attached) which concluded that because some of the data required to be reported may already be in the public arena and therefore EPA would not accord it Confidential Business Information (CBI) protection. As you might expect, some view this conclusion as premature, and one that should be made at on a case by case basis during the data collection period. In particular, certain industries for which GHG data reporting is currently deferred are very concerned that sensitive business information and trade secrets will not be adequately protected by EPA once their data must be reported. Do you agree that certain sensitive information and trade secrets reported under the greenhouse gas reporting rule should be treated as CBI and protected? Will EPA reconsider the approach announced in its December 17, 2012 memorandum? How does EPA intend to use all of the GHG data being collected under the rule?
Vitter/Boozman	Health Benefits	What health benefits are projected to occur as a result of an existing source NSPS - that is, benefits other than the co-control of criteria pollutants or NESHAPS?
Vitter	Health Benefits	Why does EPA claim that its green house gas regulations will have health benefits at levels far below the current PM NAAQS, yet has only set the new PM NAAQS at much higher level? Shouldn't EPA be consistent in justifying regulations on the basis of PM health benefits and where its best scientific judgment sets the health protective PM NAAQS?
Vitter	Health Benefits	Has EPA done any studies on the health impacts of job losses?
Vitter	Health Benefits	How many human health impacts are avoided if the proposed CWA 316(b) standards are promulgated?
Vitter	Health Benefits	In 1997, EPA changed the way that it conducts Regulatory Impact Analyses (RIA) to justify the costs of many of its regulations. Specifically, EPA now regularly addresses the criteria pollutant, PM2.5, which is already regulated under its own National Ambient Air Quality Standard (NAAQS), in the benefit cost analysis (BCA) for other pollutant regulations, particularly air toxics. Where the Agency finds that PM2.5 emissions reductions show benefits that are the same or greater than that for the pollutant being regulated (a "co-benefit"), the agency has based the rule at least in part on that result. EPA's Mercury and Air Toxics rule for power plants is an example of this approach, which presents at a minimum some practical and scientific questions of validity. Depending on the degree to which EPA relies on co-benefits, EPA could be over-regulating the pollutant(s) that is the focus of an RIA. Since PM2.5 is regulated separately from other pollutants, doesn't this approach really mean that EPA is "double counting" these PM2.5 reductions across other regulations? As Administrator, what steps would you take to ensure that the co-benefits of regulation do not become a regular basis

		for the calculated benefit of any particular regulatory proposal?
Vitter	Health Benefits	EPA rationalizes many of the very costly regulations it has proposed by citing theoretical PM related health benefit estimates that are based on data collected over 30 years ago. In fact, the key Harvard Six Cities and American Cancer Society data are based on surveys that are over 30 years old. Are you aware that in 2004 the NAS recommended that EPA not rely on these benefit studies because the individual data have not been updated? Why does the EPA continue to rely on studies that the NAS has stated should have "little use for decision making?" Is EPA misleading the public in citing these implausibly high benefit estimates when the NAS has clearly told the Agency not to rely on these studies? Is EPA's claim of achieving benefits equivalent to curing cancer based on these same flawed studies that rely on outdated information? Will you promise not to rely on studies using the American Cancer Society or Harvard Six City databases until the data are updated as recommended by the National Academy of Sciences?
Vitter	Health Benefits	On one of his first days in office, the President signed a memorandum entitled "Transparency and Open Government" in which he committed to create "an unprecedented level" of openness and transparency. The President correctly stated "transparency promotes accountability". Given the President's commitment, will you promise today to release to the American public all of the underlying research data supporting the PM and ozone benefit studies that your office has used to support such costly regulations? Given the hundreds of billions of dollars in real costs that EPA estimates will result from these regulations, doesn't the public have a right to have the data in order to assess its validity?
Vitter	Health Benefits	Does EPA's benefit estimates for the utility MACT rule, which you estimate will cost up to \$10 billion, rely on the same two studies (Pope 2002 and Laden 2006) and the same secret databases (American Cancer Society and Harvard Six City data) that we have requested and EPA has failed to release?

Vitter	Health Benefits	Did the 2008 proposed ozone reconsideration, which you estimated could cost \$90 billion, also rely on the same two studies (Pope 2002 and Laden 2006) and the same two secret data bases (American Cancer Society and Harvard Six City data) to estimate benefits?
Vitter	Health Benefits	Does the just released Tier III rule also rely on the same two studies (Pope 2002 and Laden 2006) and the same two secret data bases (American Cancer Society and Harvard Six City data) to estimate benefits?
Vitter	Health Benefits	Doesn't your reticence to release the data suggest that the Agency is fearful the data will not hold up to public scrutiny and that there really is no support for the hundreds of billions of dollars in costs that you have imposed on the American public?
Vitter	Health Benefits	Given that you are relying on 30-year old data for your health benefit estimates, can you realistically argue that your benefit estimates are in any way as certain as your cost estimates that are based on current market prices for equipment and labor?
Vitter	Health Benefits	If HHS can code medical records to protect confidentiality and other agencies can code research data, why can't EPA do the same for data that are now over 30 years old?
Vitter	Health Benefits	What efforts have you taken to investigate the potential of employing these techniques?
Vitter	Hydraulic Fracturing	As part of its proposed air emission standards for hydraulically fractured oil and gas wells, EPA declined to directly regulate emissions of methane but instead mandated "green completions" of wells to control volatile organic compound emissions. It appears -- based on your own testimony stating that this rule could end up "reducing up to 290,000 tons of harmful volatile organic compound emissions and a side-benefit of reducing methane emissions equivalent to 33 million metric tons of carbon dioxide" - that EPA's decision to mandate "green completions" was in effect an effort to control methane emissions. Do you agree with this assertion? Is it typical for an EPA rules stated benefit to be vastly dwarfed by a "side-benefit?"
Vitter	Hydraulic Fracturing	Are you familiar with and confident in the data EPA used to justify the "green completion" mandate?
Vitter	Hydraulic Fracturing	As you are aware, certain outside groups have filed a lawsuit challenging EPA's decision not to explicitly regulate emissions of methane. Can you commit today that you will vigorously defend your rule against this challenge and not enter into a quick settlement that will require EPA to regulate emissions of methane?

Vitter/Boozman	Hydraulic Fracturing	During your tenure as Assistant Administrator for Air and Radiation, EPA issued new air emission standards for hydraulically fractured oil and gas wells. This rule was challenged by multiple outside groups and EPA indicated earlier this year that it intends to amend and reissue the rule later this year. This February, EPA's Inspector General (IG) issued a report stating that EPA's air emissions data for the oil and gas production sector is lacking and needs to improve. As part of the report, in a memorandum dated November 16, 2012 from you to the EPA IG's office, you agreed with an IG recommendation to develop a cross-office strategy designed to address gaps in the emissions data possessed by EPA on the oil and gas production sector. Do you think it is advisable to delay any new emission rules until this strategy is in place and these data gaps are addressed? Was it a mistake for EPA to propose the air emission rules in light of the data gaps identified in the IG report?
Vitter	hydraulic fracturing	Former Administrator Lisa Jackson acknowledged that the states "are stepping up and doing a good job" regulating hydraulic fracturing. Do you see a need for the EPA to regulate fracking? Lisa Jackson also answered a question about EPA's ability to keep pace with oversight on day-to-day hydraulic fracturing operations by saying "I don't think we can" and later said EPA is "not nearly large enough to be on the ground the same way" as State regulators. Do you disagree with these comments by Lisa Jackson?
Vitter/Boozman	Hydraulic Fracturing	The EPA is currently in the middle of a multi-year, multi-million dollar project examining the relationship between drinking water and hydraulic fracturing at the urging of Congress. At the same time, we understand there have been several petitions to the Agency from groups requesting immediate action on hydraulic fracturing related activities (examples include: TRI Petition in October 2012; TSCA Petition in August 2011; E&P Waste Petition of 2010). Does it make sense for the Agency to wait on the outcome of the national water study before responding to any of these petitions or developing rulemakings associated with any one of the petitions? If not, what scientific work is being done that would support taking any action at this time? If you are not going to wait before moving forward with regulatory changes, should we continue with the study?

Vitter	Hydraulic Fracturing	<p>Last August, the EPA’s Science Advisory Board (SAB) noticed in the Federal Register a call for experts to sit on an ad hoc panel to advise the SAB on the EPA’s national hydraulic fracturing and water study. Given the significance of this study into the relationship between drinking water and hydraulic fracturing, shouldn’t the panel include experts in the oil and natural gas industry that have direct, current and real world experience in unconventional oil and natural gas development? It has come to my attention that a number of industry experts that were included on the November 2012 list of candidates for the SAB ad hoc panel have been notified that certain financial interests in oil and natural gas companies are considered by EPA to be “disqualifying financial interests” under the Ethics in Government Act of 1978 and related regulations. Isn’t there a conflict of interest waiver available for special government employees serving on SAB panels and other committees subject to the Federal Advisory Committee Act? Other federal agencies overseeing regulated industries, including the DOE and FDA have issued waivers to individuals. EPA’s own guidance recognizes that a waiver may be warranted when “the participation of the individual is so vital as to waive a conflict of interest.” Given that current oil and natural gas experience is important to a study looking at today’s drilling and production technologies and EPA has clear authority to waive a conflict of interest based on a disqualifying financial interest, should conflict of interest waivers be used to ensure that current, real world experience in today’s unconventional oil and natural gas industry is included on the peer review panel for the EPA study?</p>
Vitter	Hydraulic Fracturing	<p>EPA has repeatedly stated that with regard to its studies associated with hydraulic fracturing, a transparent, research-driven approach with significant stakeholder involvement can address questions about hydraulic fracturing and strengthen the nation’s clean energy future. However there are several examples, such as Dimock, PA, Parker County, Texas, and Pavillion, Wyoming where it appears the Agency is more interested in rushed judgments, which turn out to be inaccurate, and placing information in the hands of the media rather than undertaking a sound scientific approach to addressing fundamental questions. Will this continue to be the Agency’s response to difficult technical issues under your leadership?</p>

Vitter	Hydraulic Fracturing	Congress made clear in the Energy Policy Act of 2005 that the states are responsible for regulating hydraulic fracturing within their borders, and that the EPA has a very limited role regulating hydraulic fracturing through the Safe Drinking Water Act. EPA has constantly pushed to expand its reach beyond what Congress has authorized, and that seems to be what the agency is attempting to do with draft guidance on the use of diesel fuels in hydraulic fracturing issued last year. The guidance offers a vague and unworkable definition of “diesel fuels,” which covers more than just diesel fuels, and unnecessarily calls into question the legitimacy of decades-old, state-run regulatory programs that to date have produced zero cases of groundwater contamination as a result of hydraulic fracturing. If you are confirmed, will you withdraw this draft guidance? What are the plans of the Agency with regard to the diesel issue? What is the timing?
Vitter	Hydraulic Fracturing	The president as well as top officials in the Department of the Interior and Department of Energy have emphasized the importance of shale gas development and touted the increase in U.S. oil and natural gas development. The use of hydraulic fracturing and horizontal drilling has been essential to this increased development of oil and natural gas as well as the resurgence of American industry including the manufacturing sector. Before Congress in May 2011 former EPA Administrator Lisa Jackson testified to the absence of any “proven case where the fracking process itself has affected water” and then reiterated in an April 2012 interview that “in no case have we made a definitive determination that the fracking process has caused chemicals to enter groundwater.” Do you agree with this position? Are you aware of any definitive determinations that would contradict these statements?
Vitter	Hydraulic Fracturing Studies	In December 2011, EPA released a draft report entitled “Investigation of Ground Water Contamination near Pavillion, Wyoming.” This report concluded that fracking fluid was present in groundwater at Pavillion and set off newspaper headlines suggesting that EPA had a documented case of groundwater contamination from shale gas development activities. In January 2013, over a year later, EPA announced it was delaying the release of findings in the Pavillion matter by 8 more months to evaluate new data. Do you believe that EPA’s Pavillion draft report met the standards of quality assurance and scientific rigor that you will expect as EPA Administrator?
Vitter	Hydraulic Fracturing Studies	Will you commit that EPA’s final report on Pavillion will be undertaken in accordance with EPA standards on quality assurance and with appropriate opportunities for peer review?

Vitter/Boozman	Hydraulic Fracturing Studies	Do you believe that EPA should refrain from issuing conclusions such as those reached in the Pavillion case before having all of the relevant data confirmed and subjected to Agency-standard quality controls and peer reviews? As Administrator will you encourage EPA officials to refrain from making public conclusions or accusations such as these prior to confirming that the conclusions reached are supported by scientific evidence?
Vitter/Boozman	Hydraulic Fracturing Studies	In December 2010, EPA's Region 6 issued an emergency order under the Safe Drinking Water Act alleging that gas wells operated by Range Resources in Parker County, Texas were leaking methane into local residences. Once again, this led to headlines indicating that EPA had linked shale gas development to groundwater contamination. In April 2012, this case was dropped. As Administrator will you encourage EPA officials to refrain from making public accusations such as these prior to confirming that the conclusions reached are supported by scientific evidence?
Vitter	Hydraulic Fracturing Studies	In 2011, EPA investigated groundwater contamination issues in Dimock, Pennsylvania. While this investigation triggered headlines suggesting that hydraulic fracturing was responsible for water contamination, EPA testing in 2012, indicated that there was no risk to human health from the drinking water and that no significant levels of fracture fluid had been found. Based on the discontinued or discredited investigations in Pavillion, Wyoming, Parker County, Texas, and Dimock, Pennsylvania, do you think that EPA has a credibility problem with its actions relating to hydraulic fracturing? What steps will you take as Administrator to address this before the release of any further reports on hydraulic fracturing?
Vitter	Hydraulic Fracturing Studies	With EPA's record on Pavillion, Dimock, and Parker County, how can the public be confident the largely agency water study will be conducted based upon sound science?
Vitter	Hydraulic Fracturing Studies	How will information received at various stakeholder meetings be used with the study?
Vitter	Hydraulic Fracturing Studies	When will testing of the prospective sites begin? Can you tell us where these sites are located?
Vitter	Hydraulic Fracturing Studies	What involvement have State officials, and organizations such as the Ground Water Protection Council, have with the study?

Vitter	Hydraulic Fracturing Studies	Why did EPA decide to test retrospective sites to start the study? As we have seen with Pavillion and other such sites, going back in time it makes it very difficult to have a baseline and to determine if there are any issues. Why did the agency not start with prospective sites, and test the technology in real time?
Vitter/Boozman	Hydraulic Fracturing Studies	How much has EPA spent on the hydraulic fracturing study to date? How much do you anticipate that it will spend before it is completed in 2014? Can you provide a breakdown of how that money has been allocated by EPA? Have other agencies spent funds on the study as well? If so, how much?
Vitter/Boozman	Hydraulic Fracturing Studies	What has been the involvement of the White House Hydraulic Fracturing Task Force? Have they been overseeing they study? Have they been briefed on the study? What about other agencies, who else is now involved with the study?
	IM	What is EPA's policy on Instant Messaging (IM)? Has EPA taken steps to preserve IM communications consistent with their obligations under the Federal Records Act? Have IM records been destroyed? Will EPA commit to releasing IM's that are responsive to FOIA and Congressional requests?
Vitter/Boozman	Independent Peer Review	A few years ago, the EPA Inspector General raised serious procedural questions about EPA's compliance with its own peer review guidelines. What has been done to ensure that the EPA peer Review requirements are followed?
Vitter/Boozman	Independent Peer Review	Can you give me assurances that EPA will follow all requirements for having independent peer review of significant technical assessments?
Vitter	Independent Peer Review	Do you think that publication in peer reviewed journals is the same thing as the independent peer review discussed in the EPA peer review guidelines?
Vitter/Boozman	Independent Peer Review	Will you commit to send this committee and the House Speaker a detailed report of how EPA has responded to the Inspector General's report, with a list of those convened independent peer review panels?
Vitter	IRIS	Can you commit to ensuring that all draft and final assessments released by the IRIS program are consistent with the recommendations of the recent NAS Formaldehyde committee which recommended changes for all IRIS assessments, not just formaldehyde?
Vitter	IRIS	Currently the IRIS program does not consider natural background levels of chemicals in the environment or levels produced by the human body when developing hazard values. Do you support this approach? As Administrator, how will you improve the development of IRIS hazard values to make sure they pass a reality check and don't overestimate existing natural exposures that are not known to be associated with any adverse effects at naturally low exposure levels?

Vitter	IRIS	In a letter to Dr. Kenneth Olden from the Formaldehyde Panel of the American Chemistry Council dated January 4, 2013, stakeholders called for an “open scientific forum” prior to the release of the revised draft assessment, to focus on the epidemiology studies and mode-of-action data concerning the possible causal association between exposure to formaldehyde and leukemia. As you know, the National Academy of Sciences in its highly critical review of the 2010 draft IRIS assessment of formaldehyde cast significant doubt on such a causal association. It is our understanding the Office of Research and Development is resistant to convening such a science forum. We find this position incomprehensible considering the criticism EPA has endured over this particular IRIS assessment. Will you commit to instructing ORD to convene the workshop prior to release of the discussion draft, to publically document the findings and conclusions of the workshop and to incorporate those findings and conclusions in the discussion draft?
Vitter	IRIS	A recent analysis presented at the Society of Toxicology meeting showed that 67% of the Hazardous Air Pollutants (HAPs) have no IRIS value. What are the criteria for selecting chemicals for assessment within the IRIS Program? Do you believe that HAPs should be priorities for assessment within the IRIS program? Will you commit to developing a clearly articulated prioritization process for high priority IRIS assessments that benefits from, and is responsive to, engagement from all stakeholders?
Vitter/Boozman	IRIS	The scientific integrity of EPA's hallmark Integrated Risk Information System (IRIS) program has been questioned by Congress as well as the National Academies of Science (NAS). While Dr. Ken Olden is working to bring new leadership to the IRIS program, there is much more work that needs to be done. Can you commit to ensuring that all draft and final assessments released by the IRIS program are consistent with the recommendations of the recent NAS Formaldehyde committee which recommended changes for all IRIS assessments, not just formaldehyde? Will you ensure that as part of the improvements in the IRIS program, the Agency will move away from outdated default assumptions and instead always start with an evaluation of the data and use modern knowledge of mode of action -- how chemicals cause toxicity – instead of defaults? Do you agree that all studies should be independently judged based on their quality, strength, and relevance regardless of the author affiliation or funding source? To further improve the IRIS Program, will you commit to revising the way hazard values are presented to the public to ensure that critical science policy assumptions are transparently presented and not comingled with scientific assumptions? Currently the IRIS program does not consider natural background levels of chemicals in the environment or levels produced by the human body when developing hazard values. Do you support this approach? As Administrator, how will you improve the development of IRIS hazard values to make sure they pass a reality check and don’t overestimate existing natural exposures that are not known to be associated with any adverse effects at naturally low exposure levels?

Vitter	IRIS	Currently the IRIS staff are the sole arbiters of whether and to what extent draft IRIS assessments should be revised to reflect input from peer reviewers and the public. EPA's own Scientific Advisory Board has recommended the use of a "monitor" or "editor." Will you commit to using a 3rd party, independent of the IRIS program, to ensure that EPA staff have sufficiently considered and responded to peer reviewer and public input before assessments and other documents are finalized?
Vitter/Boozman	Keystone XL	What role will EPA play in the development of the State Department's Final Environmental Impact Statement for the Keystone XL pipeline permit?
Vitter	Keystone XL	What role will EPA play in the development of the Administration's National Interest Determination for the Keystone XL pipeline permit?
Vitter	Keystone XL	According to a State Department spokeswoman, the agency has been working with the EPA on the latest Draft Supplemental Environmental Impact Statement. What role has EPA played in the Draft SEIS?
Vitter	Keystone XL	The State Department is in the midst of an open comment period on the Draft Environmental Impact Statement for the KXL project. What do you think about State's climate estimates in the new Draft Supplemental EIS? Do you think they took a thorough enough look at the GHG emissions?
Vitter	Keystone XL	In the draft SEIS, the State Department seems to indicate that Keystone XL is the safest, most environmentally responsible way to deliver the oil that refineries and consumers need to fuel our economy, businesses, homes and maintain our quality of life. What are your thoughts on that?
Vitter/Boozman	Keystone XL	The DSEIS noted that Keystone XL would result in "no substantive change in global GHG emissions" and it is "unlikely to have a substantial impact on the rate of development in the oil sands, or on the amount of heavy crude oil refined in the Gulf Coast area." Based on your agencies review of the Draft SEIS and your office's work in helping the State Department develop the latest Draft SEIS, would you comment on those statements?
Vitter	LCFS	Several bills have been introduced in the U.S. Congress to establish a federal low-carbon fuel standard, or "LCFS" – including by then-Senator Obama in 2007. In fact, LCFS was originally part of the 2009 Waxman-Markey climate bill before being removed at the request of a number of Democrats. However, given that efforts to move LCFS legislation through Congress have failed, some proponents of such a program have raised the question of whether EPA might implement a federal LCFS through regulation. Do you believe that EPA has the statutory authority, under the Clean Air Act to promulgate a federal low-carbon fuel standard? If so, what is the legal basis upon which the EPA has the authority to promulgate

		an LCFS?
Vitter	LCFS	You may be aware a study was done in 2010 by Charles River Associates, a highly regarded economic forecasting firm, on what the impacts of a national LCFS program would be. The results were fairly impressive – up to 4.5 million American jobs lost, a reduction in U.S. GDP of up to \$750 billion, and an increase in gasoline prices of up to 170 percent over a 10-year period. In fact, a number of studies have analyzed what the results of an LCFS would be, either at the state, regional, or national level – and the consensus is that there would be universally negative, severe economic impacts. These studies all used the Energy Information Administration’s projections for the availability of some of these low-carbon fuel options, such as cellulosic ethanol and electric vehicles. In light of the conclusions from these studies, will the Agency seek to promulgate a federal LCFS during the current Administration? If so, how does the Agency intent to mitigate the consumer costs associated with an LCFS?
Vitter	LCFS	Given the numerous problems now evident with the federal Renewable Fuels Standard, the prospect of simply replacing the RFS with a federal LCFS is starting to be discussed by some in Congress. What is the Agency’s position on this possible substitute?
Vitter	LCFS	Can you discuss the problems associated with potential "fuel shuffling" that might occur as the result of the imposition of an LCFS? Does the agency have the ability to prevent such compliance approaches?
Vitter	Lead	According to a recent lawsuit filed by environmental groups, EPA has known for a decade that “general aviation aircraft” are the single largest source of lead emissions. Yet, EPA has made its own judgment not to issue an endangerment finding regarding lead emissions from air plane fuel. Why has EPA decided to not regulate lead emissions from aircraft which it has acknowledged is the largest source of lead emissions?

Vitter	Lead-Based Paint in Public and Commercial Buildings	On March 7, EPA responded to questions for the record from a Senate hearing, held last summer, regarding lead-based paint exposures. In the response, EPA cited 8 studies as “relevant” to information to lead-based paint (LBP) and renovations in public and commercial (P&C) buildings. On April 9, EPA responded to another letter on this issue. This time, EPA identified 5 studies as “relevant” to LBP and renovations in P&C buildings. In fact, 3 of the same studies cited in the April 9 letter were also cited in the March 7 letter. One of the studies cited twice plainly states: “There are no data at this time to assess whether environmental exposures monitored in target housing are representative of environmental exposures encountered in public and commercial buildings.” (Environmental Field Sampling Study, Volume I Technical Report, (May 1997) at p. 4-5).) Why did EPA cite this study, when it is plainly not relevant to lead-based paint exposures in public and commercial buildings?
Vitter	Lead-Based Paint in Public and Commercial Buildings	In EPA’s April 9 letter, one of the new studies that the agency cites is a “Health Hazard and Evaluation Report” out of the University of California at Berkley, from July 2001: http://www.cdc.gov/niosh/hhe/reports/pdfs/19_99-0113-2853.pdf . This study states (at p. 1) that the project took place at 3 “unoccupied” buildings that were scheduled for demolition: two 2-story multifamily residences, and a “daycare center.” All three of these buildings would be already covered under EPA’s current lead-based paint program for “target housing.” Were any public or commercial buildings assessed in this 2001 Berkley study? If no, then why did EPA cite it as relevant to the issue of lead-based paint exposures and renovation activities in public and commercial buildings?
Vitter	Lead-Based Paint in Public and Commercial Buildings	In fact, in looking through <u>all</u> of the studies cited in both the March 7 and April 9 letters, all of the structures assessed in these studies concern “target housing” or “child occupied facilities,” which are regulated under EPA’s current residential lead paint rules. In all of these studies, the only non-residential structures considered by EPA that we could identify were: (1) a school built in 1967; and (2) a 1-story office building well over 150 years old. Does EPA think that a major new regulatory program, regulating renovation activities in public and commercial buildings across the U.S., can be supported by the studies on a 1960s-era school, and a 150-year old, 1-story office building? In any of the studies cited by EPA, can the agency point to any structure that is a public and commercial building, where lead-based paint issues and renovation activities were assessed? Would you please describe any non-residential structure that was considered in these studies? Will your staff meet with interested private sector stakeholders, who would be immediately affected by any new lead-paint program, to go over these studies jointly with Committee staff? In the April 9 letter, EPA also refers to a lead “technical studies” webpage: http://www2.epa.gov/lead/technical-studies . Can you show us where, in any of these studies, public and commercial buildings specifically were assessed

		for possible lead-based paint hazards?
Vitter	Lead-Based Paint in Public and Commercial Buildings	Shouldn't EPA have a public and commercial building "hazard" finding in place <u>first</u> , and <u>then</u> determine if it needs to regulate renovation activities? After all, this is the sequence the agency followed for pre-1978 "target housing." Over seven years lapsed between the residential "hazard" finding, and the eventual residential "renovation" rule. Why isn't EPA pursuing the same process here? What "hazard" may any commercial building renovation regulations be designed to prevent?
Vitter	Lead-Based Paint in Public and Commercial Buildings	The February 13 letter to EPA explained that this commercial building rule will have great consequences for federal buildings – including those right here on Capitol Hill. In EPA's April 9 response, the agency generally identified the agencies and departments it has, or plans to, contact in the federal buildings community. But the agency has not provided the Committee with any substantive, detailed plans for how it is coordinating with agencies and departments like the General Services Administration, the Architect of the Capitol, or the military branches. Please give details on the steps EPA has taken to work with GSA and other federal building managers to carefully study lead-based paint hazards in federal buildings. What outreach plans does EPA have in place to gather substantive information on lead-based paint issues in public and commercial buildings? Does EPA know what the lead paint hazards are in its own buildings?
Vitter	Lead-Based Paint in Public and Commercial Buildings	Has EPA contacted the Architect of the Capitol to get an understanding of any lead paint hazards on Capitol Hill – such as at the House Cannon Building, which is undergoing a major renovation project?

Vitter	Lead-Based Paint in Public and Commercial Buildings	Would EPA be willing to meet with the GSA, Architect of the Capitol, the military branches, and other federal facilities owners – along with EPW Committee staff – to get a better understanding of EPA’s plan to coordinate with the federal buildings community on this rule?
Vitter	Lead-Based Paint in Public and Commercial Buildings	We understand that affected real estate and contracting trade groups have offered to meet jointly with EPA, GSA, and other federal building managers on this issue. Does EPA plan to hold such a joint meeting with real estate and contracting trade groups? If yes, when?
Vitter	LNG Exports	In November 2012, EPA’s Region 3 wrote a letter to the Federal Energy Regulatory Commission (FERC) recommending that FERC and DOE expand their NEPA analysis of LNG export facilities to include a study of the indirect and cumulative environmental impacts of exporting LNG. Do FERC and DOE have the sole statutory and regulatory authority to review and approve LNG export applications?
Vitter	LNG Exports	What is your view of EPA’s role in the LNG export application process?
Vitter	LNG Exports	What “indirect” environmental impacts might result from LNG exports?
Vitter	NAAQS SO2 (marine)	<p>The International Maritime Convention (IMO) has amended the International Convention for the Prevention of Pollution from Ships (MARPOL) to require ships operating in Emissions Control Areas (ECA), which include the vast majority of the US coastline, to use only low sulfur fuels. The first stage of this program, which required use of fuel oil with a sulfur content of 1% or less came into effect this past summer and has led to increased shipping costs. There is evidence that these stringent limits are having a significant financial impact on short seas shipping companies, and, in some cases, higher shipping costs are resulting in higher costs for downstream consumers in the U.S.</p> <p>For this reason, I am troubled that by August 2015, ship owners operating in these waters will be required to use fuel that contains no more than 0.1% sulfur. I have significant concerns about the impact such a cut would have, not just on short seas shipping companies, but the health and safety of the U.S. economy.</p>

Vitter	MATS	On March 28, 2013 the Environmental Protection Agency (EPA) published updated emissions standards for power plants under the Mercury and Air Toxics Standards (MATS). The MATS rule imposes sweeping new emissions requirements for power plants, and EPA expects that the MATS rule will entail upwards of \$10 billion in compliance costs, making it the most expensive rule in EPA's history. In promulgating the MATS rules, EPA relied heavily on the claim that the rule will benefit public health through decreases in particulate matter pollution (PM). However, regulation of PM is primarily accomplished through National Ambient Air Quality Standards (NAAQS), which are required to be set at levels that provide adequate protection for the public health or welfare. Accordingly, it appears that the agency has set a NAAQS standard for particulate matter at a level insufficiently protective of public health and welfare. Can you share your thoughts on this?
Vitter	MATS	What percentage of the health benefits in all EPA's air regulations taken together over the last five years are attributable to collateral reductions in particulate matter arising from these regulations?
Vitter/Boozman	MATS	EPA's website says that mercury "can travel thousands of miles in the atmosphere before it is eventually deposited back to the earth in rainfall or in dry gaseous forms." If this is true, wouldn't rising consumption of coal in countries like China and India (whose regulatory regimes are less stringent than our own) offset any domestic mercury reductions connected to the MATS rule? In fact, if more US manufacturing moves to these countries, which have less stringent emission controls than the US, wouldn't a possible result of MATS be an increase in global mercury emissions?
Vitter	MATS	During consideration of the MATS rule both Commissioners at FERC and outside electricity experts raised concerns about the potential for forced retirement of generating facilities causing costly reliability problems. EPA even admitted that localized reliability problems could result from the rule. Given that the construction and use of generating facilities is time and capital-intensive, at what point do you think that cumulative regulatory burdens on the electricity sector may create reliability problems?
Vitter	Mingo Logan Coal Co. v. EPA	In March, 2012, a federal court struck down EPA's retroactive revocation of a mining-related CWA Sec. 404 permit, holding unequivocally that EPA has no authority to retroactively veto CWA Sec. 404 permits issued by the U.S. Army Corps of Engineers. EPA has appealed the decision, maintaining that at any time after the issuance of the permit – even where, as here, the permit has been being properly followed for several years and EPA had worked with the permittee and the Army Corps for ten years prior to permit issuance to reach an acceptable alternative – EPA may veto the permit. What do you think the practical effect on industry would be of having Sec. 404 permits be subject to EPA's veto whenever the agency chooses?

Vitter	Mingo Logan Coal Co. v. EPA	During deliberations on the Clean Water Act in Congress, Senator Muskie note that there are three essential elements to the Clean Water Act -- "uniformity, finality, and enforceability". How do the assertions made by EPA regarding the scope of its authority under Sec. 404 comport with the notion of permit finality?
Vitter	Mingo Logan Coal Co. v. EPA	Has EPA considered what effects its actions might have on state SMCRA permitting programs?
Vitter	NAAQS - Ozone	EPA is on schedule to propose a new ozone NAAQS this December and finalize it in September 2014. We understand that EPA's Clean Air Science Advisory Committee (CASAC) has recommended that the standard be set between 60 and 70 ppb based on recent health studies and has asked EPA to evaluate a standard at 55 ppb. We are concerned about the economic impacts of any change to the standard (EPA has estimated the costs of a 60 ppb standard to be \$90 <u>billion</u> /year). Can you identify the language in Section 109 of the Clean Air Act that prohibits EPA from considering costs? Have you seen any of the maps of projected nonattainment areas at 60 ppb? Most of the country would be nonattainment, and the ability of the regulated community to obtain a permit for the construction or expansion of any new manufacturing or power generation facility could be compromised. I understand such impacts are being felt right now from the rules your department issued in December to tighten standards for particulate matter. I also understand that while the agency tightened the particulate matter standard, you did not issue any accompanying rules or guidance that would allow for smooth implementation. Can you tell us how and when EPA will prepare implementation rules for particulate matter and ozone to prevent disruptions to the economy, and in particular how EPA will ensure the availability of low-cost offsets to allow new plants and the expansion of existing plants?
Vitter	NAAQS - Ozone	EPA routinely justifies more stringent air quality standards on the basis of reducing asthma attacks. In fact, EPA credits its rules with avoiding about a million asthma attacks each year. However, while U.S. emissions of criteria pollutants have been cut by about 50% since just 1990, the incidence of asthma attacks has increased. Taken together, these two facts suggest that EPA efforts to further reduce emissions and consequent health benefits will not necessarily be correlated. In fact, the US Government's own CDC cites numerous triggers for asthma attacks that are not related to ambient air quality. Of course, the dramatic improvements to our air quality must be maintained, but each incremental improvement comes at a greater and greater cost. Is it time for EPA to re-think some its valuations of health benefits? Is it time to consider that implementation of the rules, ultimately yield a negative impact on consumers' health and welfare because they make them poorer?

Vitter	NAAQS - Ozone	The U.S. has achieved significant progress in reducing air pollution in the 40 years since the Clean Air Act's passage. According to EPA statistics, total emissions of the six principal air pollutants have dropped by 59 percent since 1970. Current federal regulations will continue this progress by significantly reducing ground level ozone-causing emissions over the next two decades. Emissions from power plants are expected to be cut in half by 2015 and the emissions from cars and trucks are expected to be reduced by 70 percent by 2030. Do you think that Americans are enjoying the benefits of cleaner air, and will continue to enjoy those benefits as the air gets cleaner in the future, regardless whether the existing standards are adjusted?
Vitter	NAAQS - Ozone	In 2010, EPA proposed to reconsider the existing ozone NAAQS, an effort the Administration ultimately abandoned. The standards your office proposed could have potentially tripled the number of ozone non-attainment counties. In fact, many of America's most pristine national parks would have failed those standards. Do you continue to believe that it make sense to pursue a policy that puts the Grand Canyon and Yellowstone National park in non-attainment? How would developed areas ever comply with such a standard, if wilderness areas cannot?
Vitter	NAAQS - Ozone	EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over \$90 billion per year. President Obama halted that effort, citing "regulatory burdens and regulatory uncertainty, particularly as our economy continues to recover." As EPA is now in the process of again reviewing the ozone NAAQS, do you agree with the President that the Administration should be mindful of the potential regulatory burden that revised standards could have on a recovering U.S. economy?
Vitter	NAAQS - Ozone	EPA's own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over \$90 billion per year. We are driving manufacturing out of the U.S., to other countries with lax environmental standards. In analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls?
Vitter	NAAQS - Ozone	EPA revised the ozone NAAQS in 2008 by adopting more stringent standards. Designations for that standard were made last May. EPA has said that it plans to adopt a rule on the content of state plans for implementing the revised standards. The Agency has said that it will propose that rule this coming May. What is the schedule for finalizing that rule? Why is EPA considering changing the ozone NAAQS when states have not yet been given a chance to implement the existing ones?

Vitter	Ozone NAAQS	A tightening of the standard from .075ppb will most likely put a significant amount of new areas into non-attainment. Your Agency has even admitted during the reconsideration in 2009 that “a significant portion of the country” cannot meet EPA’s proposed ozone requirements. Studies also show that if the standard is set at .060ppb that most of the counties that already have monitors would be in violation, as well as a vast majority of unmonitored areas would be in violation of the lower standard. How does EPA expect to handle the significant amount of new counties being in non-attainment, especially with some being in non-attainment for the first time?
Vitter	Ozone NAAQS	This year marks the end of the five year review period for the ozone national ambient air quality standard (NAAQS), which was last set in 2008. Currently, the 1997 standard is still not fully implemented and EPA has yet to resolve issues concerning the 2008 standard. Given the problems and delays in implementation, do you think EPA will recommend a further reduction in the ozone NAAQS standard? If so, what justification does the Agency have for further reducing the standard? Is it not true that air quality will continue to improve without a new ozone NAAQS?
Vitter	NAAQS - Ozone	Given EPA’s issues with implementation of the 2008 standard, and that you are still finishing the work to attain the 1997 standard, do you think the Agency’s implementation schedule is too aggressive considering so many areas in non-attainment are still struggling to comply with the standard set more than 15 years ago? Is the Agency required by law to reduce the ozone NAAQS following each 5 year review period?
Vitter	NAAQS - Ozone	Further reduction of the ozone standard could cost between \$20 and \$90 billion annually according to government estimates and if the standard were set at .060ppb, the lowest in the range EPA considered during the reconsideration in 2009, a NAM study estimated that more than 7 million jobs could be lost. When CASAC and EPA are looking at proposing a range for a new ozone NAAQS, do you consider the impact on jobs and manufacturing in the areas that could be captured under the new standard?
Vitter	NAAQS - Ozone	It seems that EPA tends to look at regulations it promulgates in a vacuum and does not consider how a particular regulation affects another. For example, in order for refiners to remove sulfur from gasoline under the new Tier 3 rule, they will be reducing sulfur, but in exchange they will also be increasing their GHGs. Additionally, the lowering of the ozone NAAQS will also result in an energy penalty for refiners, as their RTOs require more natural gas usage. Why does the agency not consider these types of conflicts before moving forward with regulations that conflict with one another?

Vitter	cooperative federalism	In the Clean Air Act, please provide you definition of cooperative federalism. Can you conceive of any circumstances where EPA has disagreed with a State's approach, on policy grounds, and decided that the Agency will not intervene to override the state?
Vitter	cooperative federalism	Are there any circumstances where a State implementing the Clean Air Act should, as a policy matter, be insulated from EPA interference?
Vitter	NAAQS	Do you believe that the NAAQS review and Implementation process will ever catch up to its statutory 5 year deadlines for review? what steps would you take to have the timing of the NAAQS program comply with the Clean Air Act?
Vitter	NAAQS - PM	On December 7, 2012, a PM2.5 monitor in the North Pole, Alaska registered a concentration of approximately 172 micrograms per cubic meter for the 24-hours of that day, almost five times the EPA health based standard. The average daily temperature for that location was -26 degrees Fahrenheit. PM2.5 comes primarily from combustion, which, given the temperature, was likely wood or fuel oil burning for heating purposes, meaning that people were generating heat in order to survive the cold. Given the choice, many likely chose to survive the elements that day by burning fuel despite the potential long-term health risk associated with being exposed to such a high concentration of air pollution. If confirmed, how will EPA balance incremental, long-term health improvements with the acute, or short-term, health impacts that could occur if the standards are lowered?
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Vitter	NAAQS - PM	EPA currently uses a mass based PM 2.5 NAAQS without regard to the chemical make-up of the particulate. Early in the Bush Administration, OMB's then-Director of OIRA, John Graham, wrote a letter to then-Administrator of EPA Christy Todd Whitman, suggesting that EPA needed to redirect Agency research funds to do speciation studies to determine the source of PM _{2.5} health effects. Do you know if those studies were done? Doesn't the chemical makeup of PM 2.5 effect determine the degree of health impact? Should the PM 2.5 NAAQS be species weighed to better protect the public?

Vitter	NAAQS - PM	If confirmed, will you commit to address NAAQS implementation issues? Can you give the Committee a schedule of concrete actions you will undertake and the deadlines for those actions? Are you open to delaying the effective date of the PM NAAQS until EPA, states and permittees have the right implementation tools in place?
Vitter	NAAQS -SO2	What is EPA doing to collect additional relevant data that is necessary in determining the SO2 emission reductions from prior industry investments to reduce SO2?
Vitter	NAAQS-SO2	As the EPA considers its approach to implementing the Sulfur Dioxide (SO2) National Ambient Air Quality Standards, we urge you to ensure States have maximum flexibility to determine the most appropriate approach to accurately establish their attainment status. While the preference is the use of actual monitors in gathering the necessary data, we recognize financial constraints may force States to rely on modeling or perhaps a hybrid approach. The current models and assumptions in EPA guidelines are of concern as they over predict expected ambient air quality levels. Factors such as wind speed, the number of SO2 sources in a geographic area and the height of SO2 sources all can create distortions in the data. These distortions can result in pollution controls that are unnecessary from both capital and operating perspectives. Can you assure us that the proposed modeling guidelines will include more accurate assumptions, and not solely worst case scenarios? What types of assumptions are you considering?
Vitter	NAAQS -SO2 (marine)	I understand and appreciate the benefits of controlling sulfur emissions, and I understand that EPA has provided estimates of the health impacts of using ultralow sulfur fuels in the North American ECA, but why did EPA put a rule in place that will cause customers to utilize higher emitting modes of transportation? Did EPA's analysis consider the fact that this "intermodal leakage" moves the emissions source from as much as 200 miles offshore to within a few yards of schools, hospitals, residences, and urban areas? If not, shouldn't EPA take a hard look at the real world consequences of the regulation before it potentially pushes thousands more emissions sources into our communities and neighborhoods?
Vitter	NAAQS -SO2 (marine)	Would EPA consider other means of reducing sulfur emissions from maritime shipping? Will EPA consider an equivalency for companies that minimize the impact on onshore air quality, rather than only analyzing the mass of SO2 generated?
Vitter	NAAQS-Ozone	In postponing issuance of the revised NAAQS, the President specifically cited economic reasons. Does this conform to EPA's past insistence that they are prohibited by the Clean Air Act from considering economic and other concerns in the setting of standards?
Vitter	NAAQS-Ozone	A former Administration official (one of your former colleagues) at a panel during the Society of Environmental Journalists meeting in Miami in the Fall of 2012 said that the President committed an impeachable offense by explicitly linking the postponement of the revised ozone NAAQS with the

		economic recovery. Can you comment?
Vitter	NAAQS-Ozone	In the upcoming ozone NAAQS, EPA has stated that it will rely on one result from one epidemiology study to quantify mortality benefits from reductions in chronic ozone exposure when they are 11 other equally well designed epidemiology studies that suggest there is no increase in risk. Why does EPA focus only on the one positive study and the one positive result <i>within</i> that study to estimate benefits?
Vitter	NAAQS-Ozone	Given the significant controversies surrounding the studies supporting a tightening of the ozone standard, will you commit today totaking comment on the current standard?
Vitter	NAAQS-Ozone	According to recent NOAA reports, half of all the current ozone exceedances in many areas in the Western US are due to emissions from Asia. How do you plan to address this important problem?
Vitter	NAAQS-Ozone	EPA's own modeling shows simulated ozone background levels as high as 77ppb – a level that already exceeds the current standard. There is also strong evidence from NOAA, using a more sophisticated model with higher resolution, that EPA is still under-predicting ozone background levels. How will you take into account the fact that even the NOAA model is likely to under predict true background levels due to model limitations? How will you consider these high ozone background levels in setting the standard?
Vitter	NAAQS-Ozone	Are you planning on estimating and counting ozone benefits down to zero ozone levels?
Vitter	NAAQS-Ozone	How would you count benefits from reductions in exposure that occur far below the level you consider as safe?
Vitter	Navajo Generating System	Recently, EPA proposed a regional haze federal implementation plan for NGS that would require the installation of the most expensive emissions-control technology. The proposal is currently open for public comment, and EPA indicated that it will hold public hearings to accept oral and written comments on the proposed rulemaking. Can you give assurances that, if you are confirmed, EPA will host public hearings that allow meaningfully public participation, including at least one hearing apiece in northern Arizona, central Arizona, and southern Arizona, as well as conduct meaningful outreach and consultation with all affected Native American communities?
Vitter	Navajo Generating System	If confirmed, will you commit to identifying an NGS solution that upholds federal trust obligations to Native American communities, supports sustainable water policy, does not impose significant additional costs on struggling Arizonans, and does not require an appropriation or otherwise add to the national debt?

Vitter	Navajo Generating System	EPA's proposal did not include cost estimates for baghouses. Can you confirm that the NGS owners would not be required to install baghouses as a result of the change in emissions created by installing SCRs?
Vitter	NHSM Rule Making	Can you tell us what the proposed rule will be completed? Will you keep the committee apprised of the process?
Vitter	NMA v. Jackson	A federal court in the case of <i>NMA v. Jackson</i> recently struck down several EPA actions – specifically, EPA's Enhanced Coordination Process (ECP) and Multi-Criteria Integrated Resource Assessment (MCIR) for Appalachia surface coal mining, as well as EPA's guidance document, "Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order" – as violating the CWA and Administrative Procedure Act, as well as, in the case of the guidance document, the Surface Mining Control and Reclamation Act. What steps has EPA taken to implement the court's decision?
Vitter	NSPS (existing)	In December of last year the NRDC released a report calling on EPA to use Section 111(d) of the Clean Air Act to establish a new greenhouse gas program for existing power plants. Have any officials from your office, or elsewhere in EPA that you are aware of, met with NRDC to discuss their proposal?
Vitter	NSPS (Existing)	Can you assure us that EPA will not adopt a cap and trade program?
Vitter	NSPS (Existing)	Can you assure us that EPA will adopt a program that will not force new retirements of coal units?
Vitter	NSPS (existing)	Do you believe that EPA has the authority under the current language of the Clean Air Act to establish a new climate change program for existing power plants, such as the one called for by the NRDC? If so, what analyses has EPA conducted regarding the practicality or legality of using Section 111(d) of the Clean Air Act to regulate existing power plants?
Vitter	NSPS (existing)	What plans does EPA have to adopt new GHG regulations for existing power plants? Specifically, has your office prepared draft regulations, what regulatory options are you considering, and what is the likely timeline for such action?
Vitter	NSPS (existing)	Once EPA finalizes its proposed NSPS for GHG Emissions for New Stationary Sources: Electric Generating Units (EGUs), does the agency intend to propose regulations under Section 111(d) of the Clean Air Act to establish procedures whereby states set standards of performance for GHG emissions from existing EGUs in their jurisdiction? If so, does EPA agree that it can only issue guidance to the states on regulating GHG emissions from power plants and that each state must submit a plan to the agency that sets standards for performance for existing power plants within the state? Will EPA discuss its plans for the guidance with states prior to issuing such guidance?

Vitter/Boozman	NSPS (existing)	Does EPA believe it has the legal authority to impose a cap and trade mechanism in place under Section 111(d) of the Clean Air Act to reduce GHG emissions from existing power plants? If so, can you please explain how the agency could do so? Please provide citations to any relevant statutes, regulations, or case law in your explanation.
Vitter	NSPS (new)	Using the logic in the draft NSPS to create a category for “fossil fuel-fired EGUs,” why did EPA stop at including just coal and natural gas units? If you’re going to combine power generators into one category, why not extend the proposal to its logical conclusion and include nuclear units? If we did that, what would the practical result be?
Vitter	NSPS (new)	Why did EPA choose to exempt simple-cycle natural gas turbines from the proposed rule?
Vitter	NSPS (new)	How can EPA justify calling a NGCC turbine the Best System of Emissions Reduction (BSER) for a coal-fueled unit? Has such a BSER determination – that BSER for a specific unit would be to not exist as that type of unit – ever been made in the past?
Vitter	NSPS (new)	Is CCS considered BSER for coal plants? Assuming CCS was BSER, would it apply to all fossil-fueled plants – both coal and gas?
Vitter	NSPS (new)	Last August you stated: “My job is primarily to implement the Clean Air Act. Our Clean Air Act is prescriptive, but it does allow flexibility. It looks at variability in technology and design. It is not a law that picks winners and losers.” However, your department just issued a draft New Source Performance Standard (NSPS) that limits carbon dioxide emissions for new power plants to 1,000 pounds per MW and, if we exclude all of the wind and solar, essentially requires all new power plants to be fueled with natural gas. Do you believe that EPA should use the “flexibility” that you referenced in the Clean Air Act to determine what fuels can and cannot be used to power, heat and cool our homes, businesses and manufacturing facilities? What about transportation fuels?
Vitter	NSPS (new)	EPA has specifically exempted both modified (units that make major changes) and transitional (units that have yet to begin construction but have already secured a Prevention of Significant Deterioration (PSD) operating permit) from adhering to the proposed standard. EPA has stated that it does not intend to issue a standard for modified units. What will the Agency do if sued by environmental groups on this issue? Is it possible that such a lawsuit might result in the application of the new standard to all facilities that are being forced to install major upgrades to comply with other EPA regulations, such as the Mercury and Air Toxics Standards (MATS)?
Vitter	NSPS (new)	Do you agree that the current proposed standard is completely infeasible for modified power plants?

Vitter	NSPS (new)	On March 27, 2012, EPA proposed a rule that would set a limit on the amount of carbon dioxide that new power plants could emit. In this proposal, EPA recognized that coal-fired power plants will not be able to meet this limit unless they install carbon capture and storage – a technology that EPA admits is not commercially available and, according to EPA, would almost double the cost of building a new coal-fired power plant. Do you agree that this rule, if finalized as proposed, will effectively ban new coal-fired power plants in the U.S.?
Vitter	NSPS (new)	When you proposed the NSPS for new powerplants, you acknowledged that it would not be equitable to apply the new standard to plants that have already been under development for many years and have already obtained their air permits. As I understand it, you recognized that these plants will not be able to meet the new standards and you didn't want to pull the rug out from under companies who have already spent a lot of time and money to develop new plants based on EPA's long-standing rules. Is this the basic reasoning behind EPA's proposal for dealing with "transitional sources"?
Vitter	NSPS (new)	EPA also said that transitional sources had to officially "commence construction" by April of this year, or they would lose their status as "transitional sources." In other words, they would be required to meet a standard that EPA has said they can't meet. Can you explain why this deadline was chosen?
Vitter	NSPS (new)	There is a power plant that has been proposed for western Kansas known as Holcomb 2. Two rural co-ops have been developing this plant for more than 6 years and have already invested almost \$90 million dollars to develop a plant that they believe is in the best interests of their members. They have obtained all the necessary permits, but their air permit has now been challenged to the Kansas Supreme Court. When EPA finishes the NSPS for new power plants, will you treat plants like Holcomb 2 fairly? Will you commit to issuing a rule that will allow them to move forward with their project after getting a decision from the Kansas Supreme Court?
Vitter	NSPS (new)	EPA's April 2012 proposed New Source Performance Standards (NSPS) for Greenhouse Gas Emissions for New Stationary Sources: Electric Generating Units (EGUs) sets a standard of performance based on a single fuel – natural gas. This proposed standard cannot be achieved in practice for any source except natural gas combined cycle (NGCC) units. Can you please explain to the committee how setting a standard for all fuel types based on a single one does not violate the definition of "standard of performance" in Section 111(a)(1) of the Clean Air Act?

Vitter	NSPS (new)	Given the price variation in electricity produced from natural gas in New England in the winter of 2013, does EPA still believe that the price of electricity from natural gas-fired generation will remain almost the same as it is today until 2035, as the proposed New Source Performance Standards (NSPS) for Greenhouse Gas (GHG) Emissions for New Stationary Sources: Electric Generating Units (EGUs) projects? If so, could you please provide the committee with a written explanation of EPA's rationale for such a projection? If you do not believe the price in 2035 will remain close to what it is today, will EPA address this changed assumption about electricity prices from natural gas in final NSPS for GHG emissions from new power plants?
Vitter	NSPS (new)	EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases from new sources. What analysis did EPA undertake to determine that there are no costs or benefits from the proposed rule?
Vitter	NSPS (new)	Why did EPA only analyze out until the year 2020 in order to determine the lack of costs and benefits?
Vitter	NSPS (new)	A recent comprehensive modeling effort done by ICF International – using the same proprietary ICF Integrated Planning Model with EPA uses to model each of its rules – project forecasts about 50 GW of coal-fired generation retirements over the next few years, driven mostly by pending EPA rules, with the expectation of another 20 GW of retirements after that. How can you explain the difference between this analysis and EPA's?
Vitter/Boozman	over-regulation	When you served as commissioner of the Connecticut Department of Environmental Protection you expressed concerns that some state policies would cause businesses to leave Connecticut for other states more favorable to business development. Tell us if you share the same concern about EPA acting much the same way on a national level – driving energy and manufacturing companies out of the United States due to stringent, overly burdensome environmental rules.
Vitter/Boozman	over-regulation	The Administration has continuously made the case that new regulations add jobs given the need for more investments for environmental controls. However, a DOE report from only a few years ago says that the compounded burden of various regulations contributed to 66 refineries closing in the last 20 years; they even have a chart that overlays new regulations with refinery closures. If new regulations add jobs, why does DOE say it has led to closed manufacturing facilities?
Vitter	over-regulation	Like many of my colleagues, I am concerned by the recent onslaught of proposed EPA regulations and the chilling effect they are having on the economy. Many businesses are sitting on the sidelines and are unwilling to make major investments in this uncertain and unpredictable environment. What steps will you take to ensure businesses have a more stable and predictable regulatory environment?

Vitter/Boozman	Relief for “peaking” facilities	EPA’s proposed rule would impose expensive new study, monitoring, and retrofit requirements on all existing facilities, including “baseload” facilities that are the foundation of our electric system and “peaking” facilities that are used more sparingly to meet periods of peak electricity use. But the peaking units may be used for as little as a few days a year when electricity demand is high, and it would be uneconomic to spend a great deal on money on them for studies and equipment that would be rarely used and would not provide commensurate environmental benefit. In an earlier version of the rule, EPA provided an exemption for such units. Yet in the current proposed rule, which is soon to be finalized, EPA eliminated the exemption. Would you consider reinstating that exemption or providing equivalent relief from the rule’s requirements for peaking facilities so they can continue to perform their crucial reliability function?
Vitter	Relief for facilities being retired	EPA’s proposed rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule’s requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expect to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?
Vitter	Permit/Clean Air Act	There is currently a project under review by EPA in Arecibo, Puerto Rico that is experiencing a lengthy delay in obtaining a permit under the Clean Air Act. I understand that this state-of-the-art waste to energy facility meets your Agency’s most stringent air emissions standards and will help to alleviate Puerto Rico’s landfill emissions problem that has created so many health challenges for that island’s population. The delay in permitting this facility is even stranger considering your Agency permitted a nearly identical facility in Baltimore in August 2010. That permit process, from application to final order, took only 15 months. In the present case, the permit process has extended well over 2 years and we still have not seen action. Can you explain this situation?
Vitter	Permit/Clean Air Act	Ms. McCarthy, your Agency is well past its statutory deadline for issuing the permit. Your delay is preventing the island of Puerto Rico from reducing greenhouse gas emissions by over 1 million tons per year, as well as creating green technology jobs for that struggling economy. Please give me a date certain when I can expect to see that permit signed.
Vitter	Petitions for Reconsideration	Congress has been informed that there is no process whereby all of the petitions for rulemaking or reconsideration may be available to the public. Recent EPA testimony indicates that at any given time the Administrator does not know what or how many petitions have been filed. Will you promise to establish a system for keeping better track of this correspondence?

Vitter	Perchlorate	In this era of unsustainable federal government budget deficits, if you are confirmed, will you commit to review thoroughly the current status of the perchlorate rulemaking and determine whether regulating perchlorate under the SDWA is a rational and reasonable use of the Agency's limited resources?
Vitter	Perchlorate	If you determine that regulating perchlorate under the SDWA is a rational and reasonable use of the Agency's limited resources will you provide me with an explanation of other EPA priorities that will need to be delayed or abandoned in order to finalize the perchlorate MCL?
Vitter	Perchlorate	If you determine to forge ahead with the perchlorate MCL, will you provide me with a detailed analysis of the costs that will be imposed on private and public drinking water purveyors by that MCL?
Vitter	PSD	The manufacturing sector is seeing considerable new investment in new and modified facilities, and the prospect of maintaining and creating thousands of jobs, thanks in part to enhanced production of unconventional oil and gas (e.g., shale gas). Under the Clean Air Act, EPA is required to issue a Prevention of Significant Deterioration (PSD) permit within one year of deeming the permit application "complete." What has your office done to ensure these permits are issued in a timely manner to prevent permits from slowing recovery and growth in the manufacturing sector?
Vitter	PSD	What will you do to ensure PSD permits are timely, especially considering that NAAQS requirements are constantly changing?
Vitter	PSD	How will you ensure that, given the EPA and states' budgetary pressures, facilities are able to get permits and begin operating as soon as possible? Do you expect to develop or modify guidance to State permitting offices?
	RFA	In an April 10, 2013 response to a January 23, 2013 letter from Senator Vitter regarding EPA compliance with the Regulatory Flexibility Act (RFA), EPA said that it takes its responsibility to comply with the RFA "very seriously." However, while EPA used to post its regulatory agendas on the EPA website, the agency stopped after 2011 (See http://www.epa.gov/lawsregs/regulations/regagenda.html#background). Please explain why EPA stopped posting its regulatory agendas on its website. Does EPA plan to post its regulatory agendas on its website in the future?

	RFA	In a January 23, 2013 letter, Senator Vitter asked EPA to explain its plan for satisfying its legal obligations under the Regulatory Flexibility Act (RFA) since its regulatory flexibility agenda was an unprecedented 8 months past the statutory April deadline. In its April 10, 2013 response, EPA ignored this question and simply said that it takes its responsibility to comply with the RFA “very seriously,” yet EPA did not published its regulatory flexibility agenda in the Federal Register until January 8, 2013. Is it EPA’s position that a January 8, 2013 publication of its regulatory flexibility agenda complies with the statutory requirements of 5 U.S.C. § 602 (“During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda.”)?
Vitter	RFS	Regarding cellulosic volumes, each year since 2010 EPA has taken EIA’s projections about projected cellulosic biofuel production and increased it for the purpose of setting the following year’s mandate. Each year, EIA has been wrong, and EPA has been more wrong, leading the U.S. Court of Appeals for the DC Circuit to vacate the 2012 cellulosic mandate. EPA is expected to voluntarily rescind the 2011 mandate. Yet the week after the Court decision, EPA proposed an <i>increase</i> in the cellulosic mandate despite the fact that only 1,000 gallons of the 10.45 million ethanol-equivalent gallons mandate was produced for compliance in 2012. The EPA’s Moderated Transaction System (EMTS) shows no cellulosic production <i>again</i> in January, 2013. Given the Court’s admonition and the data we now have, will EPA reduce the cellulosic mandate to zero when it finally promulgates final volumes for 2013, which are now 4 months late?
Vitter	RFS	The last administrator clearly took on the role of promoting the ethanol industry. Do you believe your role as administrator is promote one industry over others, or that decisions should be made that consider the protection of the environment and the economy?
Vitter/Boozman	RFS	Given the multitude of problems from the implementation of Renewable Fuels Standard (RFS), including the issue of the “blend wall,” where the amount of ethanol required to be blended into gasoline exceeds the E10 threshold, is it now time to admit that the RFS is a broken program and is need of significant revisions?
Vitter/Boozman	RFS	In your role as administrator will you have the flexibility to address the longer term issues of the Renewable Fuel Standard? What do you plan to do to address the immediate problems?
Vitter	RFS	EPA has not yet promulgated the renewable fuel obligations for 2013 for the Renewable Fuel Standard. What action will the Agency take soon to address this problem? Obviously, 2013 has already begun. Will this rule be retroactive as of January 1, 2013? Will EPA get back on schedule and finalize values for 2014 before December 31, 2013?

Vitter	RFS	Do you agree that it is within EPA's legal authority to waive or modify the renewable fuel volume requirements of the RFS if meeting such requirements will cause severe harm to the Nation's economy? Do you think that rising consumer prices constitute the potential for severe economic harm? As Administrator, would you consider waiving or modifying the renewable volume requirements to avoid or mitigate higher gas prices on our Nation's working families?
Vitter	RFS	EPA is proud of its "global leadership" role. EPA also takes the view that it is the aggregate effects of chemicals and emissions that really matter. Has EPA taken an aggregate, global approach in analyzing the impacts of its ethanol programs? I know you've analyzed national effects, but have you looked at global effects as well?
Vitter	RFS	EPA states, in regard to its RFS mandates, that "the quantity of food brought to market might decrease, resulting in higher food prices and possibly more malnutrition". If these higher prices and increased levels of malnutrition were shown to actually cause deaths, how serious an issue would that be, in your view?
Vitter	RFS	What is your response to recent studies, such as that by Dr. Indur Goklany in 2011, which finds that the higher food prices resulting from ethanol diversion might be responsible for as much as 192,000 deaths annually?
Vitter	RFS	Studies have been made that show that the increase of food prices due to ethanol policy have increased hunger in countries such as Guatemala and Mexico, causing violent protests in Yemen, Haiti, Egypt, Pakistan, Indonesia and Ivory Coast, and could possibly create 42 million new poor people in India. What is your response to these studies, taking into account that the U.S. alone is responsible for approximately 62 percent of the world's biofuel production?
Vitter	RFS	Last year, the EPA denied petitions from seven governors to suspend RFS blending requirements. The governors contended that by diverting 40% of the U.S. corn crop to ethanol production, the RFS combined with the worst drought in 50 years drove corn prices to record heights, imposing severe hardship on poultry, beef, and pork producers in their states. Citing Section 211(o)(7) of the Clean Air Act, the EPA argued that to grant a waiver it must "determine that the implementation of the mandate itself would severely harm the economy; it is not enough to determine that implementation of RFS would contribute to such harm." But job losses, declining sales, bankruptcies, plant closures, and the like often have more than one cause. An RFS that does no harm when corn production and corn stocks are high and global demand is low might do considerable harm when the opposite conditions prevail, as they did in 2012. By insisting that the RFS "itself" must be responsible for severe harm, the EPA's denial of the petitions was disconcerting. If severe harm is occurring and the RFS contributes to it, what language in the statute prohibits the EPA from taking action?

Vitter	RFS	In October of 2011, two organizations, one of them an anti-hunger group, petitioned EPA to acknowledge the deadly side-effects of its ethanol-fuel programs. EPA took over a year— 14 months, to be exact, to deny that petition. In contrast, the White House has a “We Can’t Wait” series of policy initiatives that stress the need for urgent action. Why is that, on this issue of life-and-death, EPA obviously could wait? This was a data quality petition, and your own data quality regulations provide for a 90-day response time. What took so long?
Vitter	RFS	A recent study conducted by NERA Economic Consulting, the same firm engaged by DOE for analysis of LNG exports, found that the current RFS mandates could lead to a 30% increase in consumer gas prices by 2015. NERA also found that the RFS mandates could result in a \$580 billion decrease in take-home pay for working families. In your role as EPA Administrator, what steps do you intend to take to prevent these adverse impacts on our Nation’s economy and working families?
Vitter	RFS	Almost all analysts agree that we have reached or will soon reach the “blend wall”—or the time when the volumes of renewable fuel required by the RFS require producers to exceed the 10% volume threshold. A recent study by NERA Economic Consulting stated that the blend wall will result in fewer available RINs available for purchase to comply with the RFS and lead to higher gasoline prices at the pump for working families. In recent weeks this analysis has been borne out as RIN prices have skyrocketed from \$.05 a RIN to over \$1 a RIN. Do you agree that it is within EPA’s legal authority to release more RINs into the RFS market to reduce the impact of the blend wall on gas prices for consumers? As Administrator, would you favor doing so?
Vitter	RFS	Is it within EPA’s legal authority to establish a “safety valve” as part of the RFS program whereby the EPA would cap/hold steady RIN prices based on their impact on the Nation’s economy? As Administrator, would you consider establishing such a safety valve as part of the RFS?
Vitter	Risk Assessment Policies	There appears to be increasing capability to calibrate dose-response mechanisms for many chemicals and naturally-occurring compounds, such that an exposure threshold can be established and that exposures below that threshold are safe. This is contrary to the methods EPA has routinely employed in risk assessments as the Agency continues to utilize a linear, no-threshold approach. Do you believe it is timely to revisit the Agency’s risk assessment methodologies? Will you commit to requesting the NAS to undertake an appropriate revision to the Silver Book?
Vitter	Rules	Given tight budgets, shouldn’t EPA be focusing its efforts on rulemakings mandated by a specific environmental statute?

Vitter/Boozman	Scientific Data Available to Public	To understand the scientific underpinnings of conclusions provided in many of EPA's documents, the public has had to resort to using Freedom of Information Act requests or other approaches, to try to obtain scientific reviews, assessments, and rulemakings and other information and data that the EPA has relied upon, but which is not made readily available to the public. As use of these tools is time consuming and creates legal hurdles, the information has not been available in a timeframe that can inform public review and public comment of these documents. As part of a commitment to transparency and openness, do you agree that the data and information which underlies the key scientific studies the agency relies upon in important scientific reviews, assessments, and rulemakings (e.g., National Ambient Air Quality Standards Integrated Science Assessments, IRIS Toxicological Review), should be available to the public? As Administrator, will you commit to making this information available in public dockets?
Vitter	Selenium Water Criteria	EPA is currently involved in a scientific assessment of Selenium that will be used to propose a new national Selenium water quality criterion. EPA has stated that it intends to put out its proposed criteria for public comment this coming Fall. Under your leadership, what would EPA's strategy be for incorporating relevant scientific critiques and comments EPA receives into its final Selenium criteria?
Vitter	Selenium Water Criteria	How is EPA taking the site-specific nature of Selenium issues into account when developing the national standard?
Vitter	Small Business Advocacy Review Panel	EPA is subject to a consent decree requiring it propose revised effluent guidelines for power plants by April 19. I have heard concerns expressed about the cost of the technologies being considered relative to the amount of pollutants removed. Cost effective regulations are important – especially to small utilities and those serving rural or economically disadvantaged communities. Why did EPA not convene a formal small business advocacy review panel ahead of the pending proposed wastewater rules as required by the Small Business Regulatory Enforcement Fairness Act? Can you assure me that EPA has thoroughly evaluated the potential impacts on small utilities and that the proposed rule will not adversely affect small, member-owned cooperatives, especially those serving rural or economically disadvantaged communities?

Vitter	Solid Waste	<p>The Definition of Solid Waste (DSW) rule was finalized in December 2008. The rule permits certain valuable secondary material streams that are beneficially reclaimed, such as spent catalysts and spent solvents, to be excluded from RCRA Subtitle C requirements. The reclamation process must be either (1) under the control of the generator of the materials, or (2) the materials may be transferred by the generator to another person or company for reclamation. The 2008 rule was challenged by the Sierra Club but the case was put in abeyance after EPA agreed in a settlement with the Sierra Club that it would reconsider parts of the rule. The reconsidered rule was proposed for comment in July 2011. In that rule EPA proposed to take away the transfer based exclusion and proposed numerous additional requirements and conditions on the recycling and reclamation of valuable secondary materials. The 2011 reconsidered proposed rule creates little to no incentive for parties to recycle or reclaim secondary materials. Even more problematic, EPA has requested comment on subjecting 32 regulatory exclusions or exemptions that have been in existence for decades and have become part of manufacturing operations, for example, the closed-loop recycling exclusion, to a new level of scrutiny, and additional recordkeeping and notification requirements. Do you think that EPA should increase incentives for reuse/recycling, since incentives for recycling not only divert hazardous wastes from landfills and incinerators, but also allow the manufacture of valuable products? Do you think that the increased burden of the proposed DSW rule will tend to drive wastes that are currently recycled to disposal, which directly conflicts with the foundation of RCRA — reduce waste through recycling? Will you commit to reexamine the rule to ensure that it is based on sound scientific data, that it will decrease the burden of facility waste management and increase incentives to recycle materials to recover valuable waste streams?</p>
Vitter	SSM	Without analysis how can EPA determine that SIP provisions related to start-up, shut-down, and malfunction are “substantially inadequate” for purposes of the Clean Air Act?
Vitter	SSM	Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?
Vitter	SSM	Do you agree that policy changes are not enforceable or mandatory requirements of the EPA?
Vitter	SSM	Has EPA done any analysis like it did for the NOx SIP call to determine if the SIP provisions in question are threatening the NAAQS?
Vitter	SSM	EPA argues that SSM prevents the enforcement of emissions limits. Isn't this circular since the validly approved SIP exempts such events from the emissions limits?
Vitter	SSM	Were the existing SIP provisions in question legally approved and promulgated by EPA and the states? What is the legal basis for declaring a validly-approved SIP provision invalid after the fact?
Vitter	SSM	Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM

		provision?
Vitter		Rulemaking is increasingly being accomplished through the use of consent decrees that commit the EPA to taking specific regulatory actions. The consent decrees agreed to by EPA and outside groups often commit EPA to specific actions and timeframes. If EPA is going to make specific regulatory commitments to outside groups, shouldn't there be an opportunity for Congress or the public to comment on these commitments before they are made, rather than having the opportunity to comment only after legally enforceable policy commitments are made by EPA?
Vitter	SSM	It is often not feasible to operate or use pollution control equipment during SSM periods without causing damage to that equipment. Some types of pollution control equipment cannot operate at full efficiency during startup periods, and some facilities and equipment must use alternative fuels during startup periods that pollution control equipment was not designed to target. What steps will EPA take to avoid a one-size-fits-all approach to implementing this rulemaking? Why is the EPA proposing to take away the ability of states to use enforcement discretion for excess emissions resulting from startup, shutdown and malfunctioning periods? Does EPA think that states are abusing this authority?
Vitter	State Primacy	Do you agree that it was Congress' intent for the States to play the lead role in relevant air quality regulatory decisions? Are you committed to having the EPA implement the Clean Air Act in a manner that reflected that intent?
Vitter	State Primacy	States have the primary responsibility for implementing the environmental programs and regulations that EPA develops. Most States receive less than 20% of their overall budget from EPA, and in some cases, significantly less; yet EPA continues to adopt new regulations and programs without providing the States with commensurate funding. If confirmed, how will you balance the increasing demand for the State's services with the decreasing availability of the resources needed to implement EPA's ever expanding programs?
	Tier III	Why did EPA withhold the findings of its backsliding study until the Tier 3 rule was released?
	Tier III	Generally, EPA shows the results of its studies, but withholds the modeling. Why is this a common practice of EPA?
	Tier III	Last year, EPA identified 36 marginal ozone nonattainment areas that must attain by 2015. This means 3 clean summers, 2013 through 2015. Tier 3 will not be effective during this period. There are not many areas with attainment dates after 2015. Do they all need Tier 3? Do we need a national Tier 3 program to help a few areas?

Vitter	Tier III	EPA's Tier 3 proposed rule would change the certification fuel that is used to test vehicles and engines for compliance with Clean Air Act standards. EPA is proposing to mandate that gasoline with 15% ethanol be used as certification fuel. Your rule describes this action as “forward looking” while admitting that E15 is now only commercially available in a limited number of fuel retailers. Is it appropriate for EPA to use its Tier III regulation to compel automakers to produce E15 vehicles? Why is EPA making this change now?
Vitter	Tier III	Wouldn't it be prudent for EPA wait to see how E15 performs in the marketplace prior to mandating its use as the new certification fuel?
Vitter	Tier III	If E10 is now the predominant gasoline blend, why wouldn't EPA consider this fuel first as the new certification fuel?
Vitter	Tier III	Last year, the D.C. Circuit ruled that petitioners did not have standing to challenge EPA's decision to approve E15. The court did not rule on the merits, but judges on the panel expressed concerns over EPA's interpretation of its Clean Air Act authority to grant a waiver for E15. Different affected parties have filed for certiorari at the Supreme Court. Will EPA wait to see what happens to these petitions prior to finalizing any changes to certification fuel? Would EPA consider withdrawing the proposed changes for E15 certification fuel if the court grants cert?
Vitter	Tier III	Does it concern you that the D.C. Circuit expressed serious concerns over EPA's interpretation of the Clean Air Act waiver provision, both at oral argument and in a dissenting opinion? How should this affect EPA's approach to future waiver requests?
Vitter	Tier III	EPA has been working on a Tier 3 rule for some time. When was the decision made to propose E15 as a certification fuel? Please provide the committee with a list of all meetings or contacts with non-governmental entities, as well as any associated records and documents (whether internal EPA records or documents or otherwise) with regard to the issue of proposing E15 as a certification fuel prior to the release of the proposed rule.
Vitter	Tier III	Please provide the committee with a detailed written analysis regarding how finalizing E15 as a certification fuel would affect EPA's assessment of future waiver requests for higher ethanol blends under Clean Air Act section 211(f)(4).
Vitter	Tier III	Has EPA ever previously required changes in certification fuel prior to the introduction of a fuel into the mass market?
Vitter	Tier III	The Tier 3 rule solicits comments on various alternative approaches in transitioning to E15 as certification fuel. Would E10 be an appropriate certification fuel since it appears to meet EPA's criteria of that test fuel that “better align(s) with the current and projected in-use fuel”?

Vitter	Tier III	Would your estimates of the benefits of the Tier 3 proposed rule appreciably change if E10 was selected as the new certification fuel?
Vitter	Tier III	Have you considered whether the proposed tailpipe and evaporative standards are appropriate if E10 is the new certification fuel, or would they need to be adjusted?
Vitter	Tier III	E15 is not the certification fuel in California. It is E10. I understand that California does not permit its gasoline to be E15. EPA has touted national uniformity in many areas of mobile source regulation. Why have you proposed E15 as a federal certification fuel when it cannot be used as such in California?
Vitter	Tier III	Your Regulatory Impact Analysis assumes that E15 utilization for 2001 and later model vehicles will be 50% by 2017, about 80% by 2019 and 90% by 2020. You also project that use of E15 will be substantially higher in Reformulated Gasoline (RFG) areas, which are major population areas by Clean Air Act definition – EPA projects nearly 75% of gasoline will be E15 in RFG areas by 2017. Yet E15 is now almost entirely absent from the market by EPA’s own assessment. Are you assuming, then, that nearly all MY 2001 and later car owners will be using E15 even if automobile companies don’t warrant such cars for using E15? Why do you assume such levels of consumer acceptance?
Vitter	Tier III	EPA data indicates that pre-MY 2001 vehicles and other equipment that cannot use E15 were almost 40% of the gasoline market in 2010. How will EPA ensure that E10 will be available for older model cars less than a few years from now?
Vitter	Tier III	Doesn’t EPA analysis of RFG areas effectively project that 3 out of 4 retail outlets will have to be selling E15 in major cities in less than four years?
Vitter	Tier III	Your Regulatory Impact Analysis assumes that E15 utilization in nonroad equipment (like construction equipment, lawnmowers and chain saws) will ramp up from zero percent in 2017 to 100 percent by 2030. Yet, to date, EPA has not acted to waive restrictions on using E15 for any nonroad vehicle or piece of equipment. On what analysis is this E15 penetration rate for nonroad vehicles based?
Vitter	Tier III	Please detail what other regulations or EPA determinations will be necessary to force this amount of E15 into the nonroad sector within the time period projected.
Vitter	Tier III	Is EPA currently considering issuing a Clean Air Act section 211(f)(4) waiver for use of E15 blends in nonroad equipment, motorcycles and other vehicles and equipment not covered by current waivers?
Vitter	Tier III	Doesn’t this mean that EPA considers E85 not to be a viable option for meeting renewable fuel standard requirements?

Vitter	Tier III	Recent reports on the proposed Tier 3 rule have warned that it could actually increase greenhouse gas emissions from the production of gasoline due to the energy-intensive equipment that would be needed to comply with the rule. Would you support rescinding the proposed Tier 3 rule if compliance with the rule was found to increase greenhouse gas emissions?
Vitter/Boozman	Tier III/E15	Is it EPA's intention to use the E15 cert fuel to force the automakers to produce E15 capable vehicles? Is it appropriate for EPA to use its Tier III regulation to force autos to produce E15 capable vehicles? Is the cost of hardening vehicles for E15 included in the Tier III cost calculations?
Vitter	TSCA	In 2009 EPA issued a set of principles on TSCA modernization. In 2010 EPA participated in the House Energy and Commerce Committee's dialogue on discussion draft TSCA legislation. Over the last several years, EPA has provided technical support to both Senate Democratic and Republican staff on TSCA reform matters. But it's my understanding that EPA has not taken a public position on any of the House or Senate TSCA reform bills introduced to date. Do you anticipate that EPA will take a position on TSCA legislation going forward? What is the Administration's view of its role in the TSCA debate? Will EPA continue to provide just technical support, or will EPA provide more leadership in the TSCA debate under your administration?
Vitter	TSCA	EPA's TSCA principles set out several key objectives for reform. TSCA is a complex statute, with many different programs intended to address new and existing chemicals. What are EPA's most important objectives in reforming TSCA?
Vitter	TSCA	Most of the concerns raised about TSCA have focused on its "existing chemicals" program, not its "new chemicals" program. Do you agree that EPA's new chemicals review program is successful? What level of confidence does EPA have in its new chemical review program?
Vitter	TSCA	In 2012 EPA identified 83 chemicals as priorities for further assessment by the Agency. Earlier this year EPA released draft targeted assessments on five of these chemicals. What has EPA learned to date from the TSCA Work Plan chemical assessment process and in particular? How is the TSCA Work Plan chemical program relevant to the debate on TSCA reform?
Vitter	TSCA	In 2010, EPA announced a very significant policy shift in its interpretation of the CBI provisions under TSCA. This policy shift abandoned more than 35 years of EPA's legal and policy interpretation and adopted a very narrow interpretation as to when claims for confidential chemical identity will receive trade secret protection under TSCA -- significantly harming the protection of legitimate confidential business information. The Agency has never responded to public comment on that 2010 CBI policy announcement. Do you believe that President Obama's Strategy on Mitigating Theft of U.S. Trade Secrets should affect EPA's 2010 CBI policy change? If so, how? As Administrator, do you intend to

		pursue regulations implementing the 2010 CBI policy change?
	Unified Agenda	In a January 23, 2013 letter, Senator Vitter asked EPA to provide the dates EPA submitted its Spring 2012 Unified Agenda and Fall 2012 Unified Agenda to the Office of Information and Regulatory Affairs (OIRA). In its April 10, 2013 response, EPA stated that they complied with OIRA's data call letters. Please provide the specific dates EPA submitted its 2012 Spring Unified Agenda and Fall 2012 Unified Agenda to OIRA.
Vitter	willingness-to-pay	EPA is increasingly using "willingness-to-pay" (WTP) surveys to supplement the expected benefits of regulatory actions with substantial projected costs. Two recent examples include the proposed Clean Water Act section 316(b) requirements for cooling water intake structures (CWIS) and total maximum daily load (TMDL) cleanup plans for nutrients and sediments in watersheds. EPA estimated CWIS costs at over \$300 million, although the final rule could change significantly. EPA estimated TMDL capital costs of \$28 billion and an additional \$2.7 billion dollars per year for operating and maintaining costs. The surveys are intended to represent what price people might assign to a theoretical effect (e.g., having a healthy fish population) of a proposed rule from which they gain no direct benefit. Thus the effects are a hypothetical and subjective justification for the proposed rule. As such, it would be inappropriate for EPA to count the results of these surveys as actual monetary benefits for a proposed rulemaking. Economic experts have concluded that there are very few instances in which such a complicated subjective tool can be used with any degree of reliability. Following a National Oceanic and Atmospheric Administration (NOAA) blue-ribbon panel review of contingent valuation surveys, a Nobel laureate economist on the panel noted that "many departures from the guidelines or even a single serious deviation would, however, suggest unreliability prima facie." Should EPA address public concerns about the direction of EPA's monetization of these survey results and their use in benefit calculations for proposed rulemakings? What steps will you take as Administrator to ensure that EPA's assessment of economic costs and benefits of its proposed rules meet standards for high quality, reliability, and reproducibility?

Vitter	ZEV mandate	As you know, EPA has granted a waiver to California for its Zero Emission Vehicle (ZEV) program. As a general matter, what is your view on sales mandates, or, in this case, using environmental laws to require that automakers sell a certain number of a particular type of vehicle? Do you believe that a manufacturer should be required to sell the mandated vehicles at a loss if that is the only way to meet the required Government sales volume? What is EPA's role in assessing the efforts of states that adopt this program to create the infrastructure, incentives, and other mechanisms that will help this program be successful? What recourse do automakers have if EPA does not exercise this oversight?
Vitter		At the direction of Congress, EPA has contracted with the National Academy of Sciences to assist in the development and eventual peer review of the IRIS assessment of inorganic arsenic. Recently, the newly formed NAS panel on arsenic convened a workshop to explore answers to some key science policy questions. In advance of the convening of the NAS panel, the EPA's National Center for Environmental Assessments conducted a workshop in December 2012. A member of the NCEA staff at that workshop seemed to trivialize the impact of the NAS work in this matter and stated that although IRIS is re-writing the document, several old sections will be used, and the bottom-line conclusion is not going to change. This statement seems to summarize the current position of the IRIS program. On the one hand, Dr. Olden, the recently named director of NCEA, makes claims of a new, improved and transparent IRIS process but, on the other hand, this approach does not appear to have devolved to the staff, leaving one to question whether real change in the program is actually occurring. What steps do you plan to take to ensure the IRIS program reflects a thorough and objective review of the science and develops hazard assessments that can withstand rigorous independent scrutiny?
Vitter		In the April 9 letter, EPA recognizes that it only has authority to regulate renovation activities in P&C buildings <i>if</i> it finds that renovations in those structures create a lead-based paint hazard. EPA also states that it is in the "very early stage of evaluating approaches" in determining whether such a lead hazard exists in P&C buildings. EPA also recognizes that, based on a litigation settlement agreement with the Sierra Club, EPA has deadlines in place to propose and finalize regulations for renovation activities in commercial buildings. In short, EPA has deadlines in place to establish regulations for renovations activities in P&C buildings. But, it does not have deadlines in place to guide the fundamental decision on whether a hazard even exists. Why does EPA have a schedule to develop regulations for renovation activities in commercial buildings, but does not have a schedule to determine if any lead paint hazard even exists in these buildings in the first place?

James M. Inhofe
Questions for the Record
Gina McCarthy Confirmation Hearing
Environment and Public Works Committee

Regional Haze

The Regional Haze program is purely for aesthetics, has nothing to do with public health, and was intended to improve visibility at national parks. States were given control by Congress to establish the emission standards and the appropriate controls for implementation. Your agency overruled Oklahoma's Regional Haze State Implementation Plan (SIP) following a Sue & Settle Consent Decree with environmental groups because you said Oklahoma's cost estimates were inaccurate. In response, EPA issued its own implementation plan that would cost \$1.8 billion and would not have any more favorable impact on visibility than the SIP.

1. Did EPA do a technical, an economic, and a cost-benefit comparative analysis between Oklahoma's State Implementation Plan (SIP) that was overturned by EPA and the Federal Implementation Plan (FIP) that EPA imposed instead? If EPA performed any of those three analyses for either or both the SIP and the FIP, please provide them to me. If EPA did not perform any or all of those three analyses for the two plans, please explain why you did not do so.
2. Do you agree that Oklahoma's low-cost SIP is more cost effective than EPA's FIP? What is the comparative cost-benefit analyses of the SIP vs. the FIP? Are there any additional or greater visibility gains achievable by the FIP that are not attainable by the SIP?
3. Did EPA use the Regional Haze program to force Oklahoma utilities to install scrubbers on coal fired utilities despite Oklahoma's equally effective, less expensive SIP?
4. Did EPA alert the state of Oklahoma or utilities in the state prior to entering into a consent decree involving Oklahoma's SIP?
 - a. If EPA did, did EPA provide both the state and the utilities with an opportunity to participate in the settlement discussions?
 - b. If EPA did not, why not?
 - c. Do you believe EPA should allow states and affected utilities to participate in any negotiation process prior to a Consent Decree being agreed to that would affect the SIP, the state, and the state's utilities?
5. Will you please provide me with all of the unredacted correspondence between EPA and the environmental groups regarding the Regional Haze program during your tenure at the Air Office?

6. Through the Consent Decree, did EPA intend to establish an unrealistically aggressive set of targets and timelines for approving State Implementation Plans to artificially constrain the amount of time available to work with states on procedural issues like cost estimates so that it could ultimately force a Federal Implementation Plan at a much greater cost?
7. Why did EPA decide to overrule Oklahoma's State Implementation Plan (SIP) and impose a FIP instead of working with the State to address whatever deficiencies EPA saw in the SIP's cost estimate?
8. As Administrator, what will your primary objective be when implementing the Regional Haze program?
 - a. Will you assure me that EPA will make every conceivable effort to work with states to ensure that their SIPs are approved, and that FIPs will only be implemented once EPA has exhausted the Clean Air Act's cooperative federalism concepts and conclusively determines through a technical comparative analysis that the overruled SIP will not meet the visibility requirements outlined in the Regional Haze program?
 - b. Will you also ensure that any FIP is the least expensive option available to EPA to meet the minimum requirements of the Regional Haze law? Will you provide economic comparative analysis of the separate plans?
9. In the CAA, please provide your definition of cooperative federalism. Can you conceive of any circumstances where EPA has disagreed with a State's approach, on policy grounds, and decided that the Agency will not intervene to override the state?

Aggregation

The Clean Air Act requires facilities to obtain a Federal Operating Permit for air emissions from the EPA if they emit 100 tons or more of any criteria pollutant per year. Properties that are truly next to one another are generally considered one facility. But if one owner has multiple facilities spread out over a large area, say 42 square miles, the facilities are considered separate. In 2007, the Bush Administration issued a memo applying this policy in the oil and gas industry, but you overturned this memo in 2009 and instead issued one that would combine the emissions of wells that are spread over a large area, triggering significantly greater permitting requirements. When this was challenged in the 6th Circuit last year, the court agreed that "adjacent" is a plain word with plain meaning, but you have not yet applied the decision outside that circuit. Also, the states have regulations that adequately address the aggregation matter, which regulations have been reviewed and found acceptable by the state regulatory bodies as well as the stakeholder groups.

10. EPA lost this case because the court found it misinterpreted the plain meaning of the law. Will you commit to apply the 6th Circuit Court decision to the rest of the country?

Hydraulic Fracturing Studies and Review Board

As you know, the EPA is currently engaged in a study on the impact of Hydraulic Fracturing on drinking water. The Agency has assembled a panel to review the study's findings, but very few industry participants were included because many hold too much stock in the oil and gas industry. It is my understanding that EPA has significant authority to waive these restrictions for participants.

- 11. Will you agree to reassemble the panel and, using your waiver authority, ensure an equal representation of industry participants with other stakeholders?**
- 12. Do you think EPA should consider the potential bias of scientists who receive grant money from environmental groups when determining whether they should be included on EPA review panels and boards?**
- 13. What is EPA's current objective for the 2014 final hydraulic fracturing study report? Will the report merely report on the results of EPA's Study? Or will the report also contain recommendations? What would be the purpose and scope of any such recommendations?**
- 14. EPA's Progress Report contains information about potential hazards associated with the chemicals used in hydraulic fracturing operations. Is EPA planning to evaluate not only these potential chemical hazards, but also whether there exist any potential human or ecological exposures to these chemicals? Standard EPA risk assessment protocols require not only an assessment of potential hazards, but also potential exposures.**
- 15. EPA's draft report regarding groundwater contamination in the Pavillion area has been the subject of significant criticism from BLM and others. I presume that EPA will not make use of the draft Pavillion report in connection with its broader hydraulic fracturing study unless and until that draft Pavillion report is peer reviewed and a final report is issued that takes into account all of the comments that EPA has received. Is that correct?**
- 16. To date, there has been no evidence of groundwater contamination caused by hydraulic fracturing. The nonexistence of incidents related to the fracturing undermine claims that a systemic environmental management problem exists. Do you share this view and do you believe states have effectively managed the risks of hydraulic fracturing on state and private lands?**

Section 321

Section 321 of the Clean Air Act (42 U.S.C. § 7621) requires the EPA Administrator to “conduct continuing evaluations of potential loss or shifts of employment” which may result from the administration or enforcement of regulations issued under the Act, “including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement.” Most other major environmental statutes contain similar language to Section 321.

17. Do you believe the Agency has an obligation to conduct continuing evaluations of the impact its regulations could have on jobs?

18. Has EPA done a Section 321 jobs analysis for any of the major regulations it has proposed or finalized since you took office in 2009?

EPA’s own estimates anticipated that the revised ozone NAAQS that your office proposed in 2010 would have cost American manufacturing, agriculture and other sectors over \$90 billion per year. These are straight-up, added costs to American manufacturing. I’m concerned that, during this slow economic recovery, we are driving manufacturing out of the U.S., to other countries with lax environmental standards.

19. In analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls? Do you believe this analysis could be covered under the Section 321 review requirement of the Clean Air Act?

Renewable Fuel Standard

Failure to exercise EPA discretion:

20. Are you aware of the run-up in RIN prices and do you agree that it is evidence that the industry has or soon will hit the E-10 blendwall? If not, what is your explanation for the run-up?

21. In light of the clear evidence that the market is anticipating dire consequences from the E10 blendwall, why has EPA refused to use its discretionary powers under EISA to lower the total and advance mandates by the same amount it is lowering the cellulosic mandate?

Warranty coverage:

22. Why do you think that the automakers, except for GM on 2012+ and Ford on 2013+ have refused to warrant E15 use in their existing fleet?

23. Have you reviewed the fuel pump and fuel sender system test report issued by CRC in January? DO you agree that the results of that testing go a long way towards explaining why the automakers are concerned about the use of E15 in their vehicles, since it showed significant and extensive damage to fuel pumps and fuel senders?

New Source Performance Standards – New Sources

EPA states that there are no costs and, concurrently, no benefits associated with the proposed rulemaking to regulate greenhouse gases (GHGs) from new sources. If that is true, then:

- 24. Why is EPA promulgating a rule that has no benefits, especially in light of the President’s numerous Executive Orders that are intended to eliminate unnecessary regulatory burdens on the business community? Did EPA factor in the need to have a diverse mix of electric generation into its analysis?**
- 25. Why did EPA only analyze out until the year 2020 in order to determine the lack of costs and benefits?**
- 26. Did EPA perform a robust analysis on the true cost of a long term switch to natural gas powered electric generation, as the rule assumes?**
- 27. A recent comprehensive modeling effort done by ICF International – using the same proprietary ICF Integrated Planning Model (IPM) with EPA uses to model each of its rules – project forecasts about 50 GW of coal-fired generation retirements over the next few years, driven mostly by pending EPA rules, with the expectation of another 20 GW of retirements after that. How do you explain the difference between this analysis and EPA’s?**
- 28. Can you explain why you used your “discretion” at the Air Office to abandon the long-standing Clean Air Act precedence of subcategorizing fuel types? Will you commit to reproposing the rule so that EPA’s precedent is maintained and fuel types are subcategorized?**
- 29. Do you intend to continue using one source category for all power plants in the final rule as opposed to issuing different NSPSs or emission limits for different types of plants burning different types of fuel?**
- 30. Using the logic in the NSPS to create a category for “fossil fuel-fired EGUs,” why did EPA stop at including just coal and natural gas units? If you’re going to combine power generators into one category, why not extend the proposal to its logical conclusion and include nuclear units? Or solar units? If EPA did that, what would the practical result be?**
- 31. How can EPA justify calling a NGCC turbine the Best System of Emissions Reduction (BSER) for a coal-fueled unit?**
 - a. Has such a BSER determination – that BSER for a specific unit would be to not exist as that type of unit – ever been made in the past?**
 - b. Is CCS considered BSER for coal plants? Assuming CCS was BSER, would it apply to all fossil-fueled plants – both coal and gas?**

We have heard people say, on many occasions, that this proposed rule represents the first time that EPA has proposed a new source performance standard for the electricity generation sector without subcategorizing by fuel source, thereby pitting one source against another. For example, Phase I and Phase II of the Acid Rain Program utilized separate categories for reducing sulfur dioxide and nitrogen oxides. The recently-finalized Utility MACT Rule did the same thing.

32. Considering the differences between coal and natural gas on greenhouse gas emissions, and carbon capture and sequestration technology is not commercially available, why would EPA intentionally put coal into such an untenable position?

Best Available Control Technology

In their guidance establishing what could be considered Best Available Control Technology (BACT) for regulating GHGs in the permitting process, EPA stated that fuel-switching from coal to natural gas would not and could not be considered BACT:

33. Since NSPS are traditionally interpreted to set the BACT “floor” for permitting purposes, how can a NSPS that eliminates the ability to construct new coal units without the implementation of commercially infeasible carbon capture and storage (CCS) be consistent with EPA’s previous guidance?

34. EPA’s BACT guidance stated that units should consider the “most energy efficient design and control options” when determining GHG BACT for power plants, regardless of fuel source. Why, then, did the Agency deviate from this plan in setting standards for new sources?

Carbon Capture and Storage

EPA makes several statements and assumptions regarding CCS in the proposed standards, and proposes that new coal fired units could comply with the rule through a 30 year “averaging” option that would allow them to deploy CCS in year 11 of operation and average their emissions over a 30 year span:

35. While conceding that CCS does not meet the requirements of BSER, EPA claims that CCS is an available compliance option. In your estimation, is CCS commercially feasible today? Are there any CCS plants that are deployed and demonstrated on a large scale? In what year do you expect CCS to be commercially viable, given current funding?

Existing Units - GHG

36. Does EPA intend to propose and adopt a standard to regulate greenhouse gases from existing power plants? If so, when, and what role will states play in promulgating rules related to this new regulation?

Modified and Transitional Sources - GHG

EPA has specifically exempted both modified (units that make major changes) and transitional (units that have yet to begin construction but have already secured a Prevention of Significant Deterioration (PSD) operating permit) from adhering to the proposed standard.

37. EPA has stated that it did not have the information to issue a standard for modified units – under your leadership, will EPA work to establish GHG rules for modified units?

- a. **Would such a move force EPA to apply this standard to all plants that are being forced to install major upgrades to comply with other EPA regulations, such as the Mercury and Air Toxics Standards (MATS)?**
- b. **Why did EPA only grant sources with a PSD permit one year to commence construction? If those sources already had permits that would prevent any more emissions than is already allowable, why did EPA force them to comply with a one year limitation?**

Utility MACT (UMACT) and Coal Plant Retirements

EPA projected that UMACT would cause 4.7 GW of coal plant retirements (RIA, P. 3-16). The North American Electric Reliability Corporation (NERC) recently issued its Long-Term Reliability Assessment, determining that over 70 GW of fossil-fired generating capacity – predominantly coal – will retire over the next ten years. According to NERC, 90% of those retirements will take place over the next five years, resulting in the loss of 20% of the nation's coal-fired generation by 2017.

38. Please explain - how can EPA's estimates of retirements be so low when compared with NERC's estimate?

National Ambient Air Quality Standards

Last June, EPA proposed to lower standards for fine particulate matter from 15.0 micrograms to 12 to 13 micrograms. EPA also took comment on levels as low as 11, but did not take comment on retaining the current standard at 15, or on other possible levels.

39. Given that there is uncertainty in different studies and given that EPA received lengthy comments during its review process arguing against revising the 15 microgram standard – why did EPA not solicit comments on maintaining the current standard? Do you believe EPA is limiting its ability to consider alternative science by only taking comment on options that would substantially lower fine particulate standards and other NAAQS?

As you know, in September 2011, the Office of Management and Budget (OMB) cited three separate Executive Orders when it requested EPA “at the President’s direction” to reconsider a draft final rule to revise the ozone standard.

40. Former EPA policy advisor Lisa Heinzerling said that the reason given for the withdraw of the ozone standard was unlawful. Do you agree? Could the President instruct EPA where to set national ambient air quality standards based on policy considerations, or could he delay a decision?

41. OMB cited Executive Order 13563 in its 2011 letter to EPA on the ozone NAAQS and stated that EPA should avoid “inconsistent, incompatible, or duplicative” regulations. In EPA’s most recent E.O. 13563 statement on the PM NAAQS, however, the Agency only cites the fact that it performed a cost-benefit analysis.

a. Why did EPA not perform a regulatory overlap analysis?

b. If you are confirmed, how will you instruct EPA to consider whether NAAQS, in particular, may be duplicative of all the other EPA regulations that impose direct standards on powerplants, major industrial facilities and mobile sources?

It is my understanding that EPA is now reviewing the Ozone rule again.

42. Will you commit to proposing the current standard so that the public can comment on whether it will meet the health standards established in the Clean Air Act?

43. If EPA is considering a similar range for ozone as they did in 2010, is there any reason to believe the economic impacts will be substantially different than the estimates from the 2010 reconsideration?

Cross-State Air Pollution Rule (CSAPR) and the Clean Air Interstate Rule (CAIR)

This rule caused great concern in the industry because of its incredibly short compliance timeline. Final rule wasn’t published in the Federal Register until August 2011, yet utilities were expected to begin complying in 2012. In late December 2011, on the eve of the rule going into effect, the D.C. Circuit Court of Appeals stayed the rule and the Court subsequently overturned it. One of the reasons the Court overturned the rule is because EPA did not give states the time to develop their own compliance plans.

44. What are EPA’s intentions with respect to a new transport pollution rule? What timeline will EPA give to states and utilities to comply with the rules? Will you set a timeline that states and utilities agree to?

EPA had determined that electric generating units in the East that were subject to the CAIR program did not have to comply with regional haze best available retrofit technology (BART) requirements because CAIR would reduce emissions more than BART. When EPA replaced CAIR with CSAPR, it revoked the determination that compliance with CAIR constituted compliance with BART, and instead determined that compliance with CSAPR constituted compliance with BART. But now CSAPR has been overturned in court.

45. Does EPA plan to return to its determination that compliance with CAIR constitutes compliance with BART? If not, does EPA intend to subject electric generating stations in the East to regional haze BART requirements on a source by source basis? When does EPA expect to decide?

Greenhouse Gases and Global Warming

During the Administration's first term, EPA promulgated its endangerment finding and adopted GHG regulations for motor vehicles. It also proposed GHG NSPS for the power sector.

46. What other areas of the economy can we expect GHG regulations in the second term? (Oil and gas, refineries, cement kilns, other industrial facilities) Do you have a plan for addressing GHG emissions in the rest of the economy?

47. Do you plan on issuing a GHG NSPS rule for refineries or oil and gas delivery systems? If so, when?

48. EPA has been petitioned to establish NAAQS for GHGs. What are your plans with respect to such a petition? Can you assure us EPA will not establish a NAAQS for GHGs? Do you agree with such a proposed approach?

Hazardous Waste (Coal Ash)

Suzanne Rudzinski, Director of the Office of Resource Conservation and Recovery, on Oct. 11, 2012, documented in a declaration to the U.S. District Court for the District of Columbia in *Appalachian Voices v. Jackson* (Civ. No. 1:12-cv-00523-RBW) why the agency could not promulgate a final rule on the disposal and management of coal combustion residuals in surface impoundments and landfills in the six-month timeframe requested by plaintiffs. Ms. Rudzinski told the court that EPA could not meet that deadline because "such a schedule does not provide EPA with the time necessary to allow sound-decision making, and would result in final agency actions that, in [her] view, are neither scientifically sound nor legally defensible." EPA's semi-annual regulatory agenda provides no projected date for completion of this rulemaking.

49. What are EPA's plans for issuing a final rule? Specifically, what are the major actions EPA plans to complete prior to issuing a final rule and the projected deadlines for completing those actions (i.e., plans for issuing a notice of data availability or any other rulemaking steps requiring public comment)?

Definition of Fill Material

The current definition of fill material, finalized in May, 2002, unified the Corps and EPA's prior conflicting definitions so as to be consistent with each other and the structure of the CWA. The current rule solidifies decades of regulatory practice, and includes as fill material those materials that, when placed in waters of the U.S., have the effect of raising the bottom elevation or filling the water. However, both EPA and the Corps have stated that they are now considering revising the definition of fill material.

50. What is EPA's rationale for revisiting the well-established division of the Sec. 402 and Sec. 404 programs?

- a. What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?
- b. Has EPA yet considered the time and costs associated with making such a change to the two major CWA permitting schemes – Secs. 402 and 404?

Cooling Water Intake Structure Rule for Electric-Generating Facilities Under CWA Sec. 316(b)

The proposed § 316(b) rule applies to facilities whose construction began before 2002 and that withdraw more than two million gallons per day. It would apply to facilities that have either closed-cycle or once-through cooling, and focuses on reducing fish and shellfish mortality attributable to "impingement" on intake structure screens and "entrainment" into cooling water systems.

Industry has urged that any acceptable § 316(b) rule for existing facilities be applied site-by-site, recognize constraints involved in modifying existing technology, include the designation of pre-approved technologies, and include provisions for taking into account prior actions to reduce impacts. A fair cost-benefit test reflecting the Supreme Court's opinion endorsing EPA's historical decision to balance costs and benefits in setting national § 316(b) standards and site-specific requirements is central to an acceptable final rule. A final rule is expected by the court-ordered deadline of June 2013.

More than 890 electric generations facilities would be affected by the rule as even facilities operating closed-cycle cooling would have to comply with the study requirements and significant technological modifications associated with impingement. This could affect approximately 35 percent of existing U.S. generation capacity—a controversial proposition that could have negative environmental, energy, cost and reliability impacts. Some facilities will be unable to meet expensive new cooling water intake structure (CWIS) requirements and remain economic. A rigid rule requiring unnecessary retrofits could cause extended outages and loss of capacity; in turn, this could affect reliability-related capacity margins.

51. Relief for “peaking” facilities – EPA’s proposed rule would impose expensive new study, monitoring, and retrofit requirements on all existing facilities, including “baseload” facilities that are the foundation of our electric system and “peaking” facilities that are used more sparingly to meet periods of peak electricity use. But the peaking units may be used for as little as a few days a year when electricity demand is high, and it would be uneconomic to spend a great deal on money on them for studies and equipment that would be rarely used and would not provide commensurate environmental benefit. In an earlier version of the rule, EPA provided an exemption for such units. Yet in the current proposed rule, which is soon to be finalized, EPA eliminated the exemption. **Would you consider reinstating that exemption or providing equivalent relief from the rule’s requirements for peaking facilities so they can continue to perform their crucial reliability function?**

52. Relief for facilities being retired – EPA’s proposed rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule’s requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. **Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expected to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?**

53. Improvements in impingement provisions – In EPA’s proposed 316(b) rule, EPA has adopted starkly different approaches to managing “impingement” and “entrainment” at existing cooling water intake structures. For *entrainment*, EPA appropriately adopted a site-specific approach, recognizing that (a) existing facilities already have measures in place to protect fish, (b) further measures may or may not be needed, and (c) the costs, benefits, and feasibility of such measures have to be evaluated at each site. Yet for *impingement*, EPA adopted rigid, nationwide numeric criteria that appear unworkable and in many cases unnecessary. In a notice of data availability issued last year, EPA signaled that it would consider a more flexible approach for impingement. **In the final rule that is due this summer, would you support replacing the original impingement proposal with a more flexible approach that pre-approves multiple technology options, allows facility owners to propose alternatives to those options, and provides site-specific relief where there are de minimis impingement or entrainment impacts on fishery resources or costs of additional measures would outweigh benefits?**

54. Improvements as to “closed cycle” cooling – In EPA’s proposed 316(b) rule, EPA has correctly NOT required existing facilities to retrofit “closed cycle” systems such as cooling towers or cooling ponds if the facilities do not already have such systems, because such retrofits are not generally necessary, feasible, or cost effective. At the same time, facilities that do have closed-cycle systems have long been viewed as satisfying the requirements of section 316(b). Yet in the proposed rule, EPA has defined “closed cycle” cooling much more narrowly for existing facilities than EPA did for new facilities several years ago, thereby excluding a number of facilities. And even for the facilities that qualify, EPA is still imposing new study and impingement requirements. In the final rule that is due this summer, would you support a broader definition of closed-cycle cooling and measures that more fully view these facilities as compliant?

55. Concerns about EPA’s willingness-to-pay survey – EPA is seeking to justify its costly proposed 316(b) rule, which would affect more than 1,260 power plants and industrial facilities nationwide, on the basis of a public opinion survey asking “how much” a random group of individuals would be willing to pay to reduce fish losses at intakes. This willingness-to-pay approach to determining “benefits” contrasts sharply with the far more traditional approach used by EPA in its earlier 316(b) rulemakings. The earlier analyses relied on actual market prices and costs incurred by individuals, rather than hypothetical questions in a public survey. The “willingness-to-pay” or “stated preference” survey is clearly intended to increase the anticipated benefits of the proposed rule. Yet such stated preference surveys are notoriously difficult to design and implement and often are very unreliable. Using such unreliable benefit estimates will inappropriately lead to cooling water controls that are neither necessary nor cost beneficial and that will not deliver the anticipated benefits but will materially affect compliance and consumer costs. **Given all these problems, in the final rule that is due this summer, would you support withdrawing the survey and clarifying that the survey and its results are inappropriate to use in implementing the final rule?**

56. In October 2010, NERC issued a report concluding that a one-size-fits-all 316(b) approach could have economic impacts nearly three times greater than the combination of the Cross State Air Pollution Rule and the Mercury and Air Toxics Standards. See NERC, 2010 Special Reliability Scenario Assessment: Resource Adequacy Impacts of Potential U.S. Environmental Regulations (October 2010). **How will EPA ensure that its 316(b) rulemaking will not precipitate the reliability and cost implications discussed in the NERC report?**

57. In June 2012, EPA proposed replacing the results of its conventional benefits analysis performed for its proposed 316(b) cooling water intake structure rule with the results of a public opinion survey. The survey results are 140 times greater than EPA’s conventional analysis using tried and true methods. Public opinion surveys have never been used to justify a major rulemaking, such as EPA’s 316(b) rule. We understand that EPA received many comments criticizing EPA’s potential replacement of the survey results with the results of its conventional analysis. **What are your thoughts on whether stated preference surveys are an appropriate tool to measure benefits?**

58. EPA's proposed rule pursuant to section 316(b) of the CWA contains a one-size fits all impingement standard. EPA received many critical comments indicating that most facilities could not meet the proposed standard even if they were to install the technology upon which EPA based the standard. Determining the best available technology at a given site requires a consideration of many site-specific factors, such as the geographic location, type of ecosystem and plant design. In June 2012, EPA issued a Notice of Data Availability indicating that EPA was considering designating a suite of pre-approved technologies as compliant with the rule. **Do you agree that it is important for EPA to consider site-specific factors in determining best available technology?**

59. EPA has continually maintained that closed-cycle cooling (i.e., cooling towers) is the best technology available to minimize environmental impacts from cooling water intake structures. [76 Fed. Reg. 22207]. In fact, Ms. Stoner testified in a March 28th Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment budget hearing that facilities with closed-cycle cooling satisfy both the impingement and entrainment requirements of the proposed rule. However, EPA's proposed rule nonetheless subjects facilities that have spent hundreds of millions of dollars on cooling towers to additional costly controls without additional benefits. **Why would facilities with closed-cycle cooling systems be required to install additional controls? What are the benefits from the additional controls?**

60. **How many human health impacts are avoided if the proposed CWA 316(b) standards are promulgated?**

61. **How does EPA intend to utilize its final stated preference report? If EPA intends to use it in the final rule, what process will EPA undergo to address concerns raised by stakeholders about the applicability and appropriateness of its use?**

Startups, Shutdowns and Malfunctions (SSM) and State Implementation Plans (SIP)

62. EPA recently proposed to disapprove provisions in 36 state SIPs based on a change in EPA policy in response to a petition for rulemaking. Were the existing SIP provisions in question legally approved and promulgated by EPA and the states?

- a. **What is the legal basis for declaring a validly approved SIP provision invalid after the fact?**
- b. **Has EPA done any analysis to determine if the SIP provisions in question are threatening attaining the NAAQS?**
- c. **Without such an analysis, how can EPA determine that such SIP provisions are "substantially inadequate" for purposes of the CAA?**
- d. **Has EPA done any analysis of the impacts on an emissions source trying to operate without the SSM provision?**

Independent Peer Review & Scientific Integrity

63. A couple of years ago, serious procedural questions were raised by the EPA Inspector General about EPA's compliance with its own peer review guidelines. What has been done to ensure that the EPA peer review requirements are followed?

64. Can you give assurances that EPA will follow all requirements for having independent peer review of significant technical assessments?

65. Will you commit to send this committee and the House Speaker a detailed report of how EPA has responded to the IG's report, with a list of those convened independent peer review panels?

Sue and Settle

66. EPA is constantly being sued for missing statutory deadlines for rulemaking and then settles the litigation in a court approved settlement agreement. The deadlines in these settlements often put pressure on the EPA to act and also may create hardships for regulated businesses by interfering with construction plans or requiring large investments in a short period of time. Do you believe that EPA should first consult with the adversely affected businesses before agreeing to such deadlines?

67. Where there are no statutory deadlines EPA may be required to Act within a "reasonable time." EPA is also subjected to citizen suits for not meeting the plaintiff's sense of when EPA should have acted. EPA also often signs a rulemaking schedule with a court enforceable deadline and does not provide enough time for regulated entities to do the necessary technical studies to properly comment on the proposed regulations. Additionally, the schedules result in very short compliance timelines making it difficult to install the mandated pollution controls. Why hasn't the EPA consulted with the regulated entities that have to comply with these regulatory timelines to determine if the required deadlines provide feasible periods for meaningful comment and compliance? Why doesn't EPA have a policy of insisting on intervention into law suits by adversely impacted regulated businesses and industry?

On December 23, 2010, EPA entered into a settlement agreement with environmentalists and some states in which the agency agreed to set new source performance standards for greenhouse gases from new power plants and, eventually, existing power plants. All of the parties to the settlement agreement are clearly in favor of drastically reducing the amount of coal that we burn for electricity. Yet the type of regulations that could come out of this settlement will impact much of the country by eliminating thousands of jobs, raising electricity rates and jeopardizing reliability, which we are already seeing. I should also add that these policies will disproportionately impact the poor and working poor.

68. Should the Sierra Club and Natural Resources Defense Council have more access to the federal government than the average citizens who will be most impacted by these types of settlements? Isn't that exactly what they have gotten in the case of this NSPS settlement?

69. Of the states that were party to the settlement agreement, all but one of them generate between zero and 17 percent of their electricity from coal, yet the states that were not privy to the settlement agreement generate as much as 96 percent from coal. In other words, the people who were in the room have the least to lose while those who were not in the room will suffer the most.

- a. Do you consider that to be good policy-making? I consider this a yes or no question.**
- b. Should the states have equal access to the EPA in formulating a path forward on consequential issues that will impact a broad swath of the economy?**
- c. If they should, why then did EPA and the Administration enter into closed door settlement negotiations on the NSPS that included the states it agreed with and excluded the states that it didn't agree with?**

70. Over the past four years, EPA frequently allowed its rulemaking agenda and schedule be driven by voluntary settlements entered in response to lawsuits by environmental advocacy groups. How will EPA respond to these sorts of lawsuits if you are confirmed? Does it damage respect for the rule of law among your state partners when you enter settlements that affect specific states without first consulting with the affected states. Does it damage respect for the rule of law when EPA fails to vigorously defend its prerogatives in responding to these lawsuits?

Court Cases – National Mining Association v. Jackson

The U.S. District Court for the District of Columbia in the case of *NMA v. Jackson* recently struck down several EPA actions – specifically, EPA's Enhanced Coordination Process (ECP) and Multi-Criteria Integrated Resource Assessment (MCIR) for Appalachia surface coal mining, as well as EPA's guidance document, "Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order" – as violating the CWA and Administrative Procedure Act, as well as, in the case of the guidance document, the Surface Mining Control and Reclamation Act.

71. What steps has EPA taken to implement the District Court's decision?

Court Cases – *Mingo Logan Coal Co. v. EPA*

In March, 2012, the U.S. District Court for the District of Columbia struck down EPA's retroactive revocation of a mining-related CWA Sec. 404 permit, holding unequivocally that EPA has no authority to retroactively veto CWA Sec. 404 permits issued by the U.S. Army Corps of Engineers. EPA has appealed the decision, maintaining that at any time after the issuance of the permit – even where, as here, the permit has been being properly followed for several years and EPA had worked with the permittee and the Army Corps for ten years prior to permit issuance to reach an acceptable alternative – EPA may veto the permit.

72. What do you think the practical effect on industry would be of having Sec. 404 permits be subject to EPA's potentially ever-changing list of acceptable disposal sites?

73. How do the assertions made by EPA regarding the scope of its authority under Sec. 404 comport with the notion of permit finality, which Congress clearly acknowledged was needed in the context of the CWA (see remarks of Sen. Muskie - there are "three essential elements" to the CWA: "uniformity, finality, and enforceability")?

74. Has EPA considered what effects its actions might have on state SMCRA permitting programs?

Water Quality Criteria – Conductivity

While EPA's conductivity "benchmark" that it had applied to Appalachian streams got set aside by the U.S. District Court for the District of Columbia in the case of *NMA v. Jackson*, EPA recently published several papers supporting its conductivity actions.

75. What are EPA's next steps with respect to conductivity? Is EPA intending to propose a national conductivity criteria? Regional criteria?

76. In the past, EPA has not addressed scientific critiques that have produced evidence that conductivity is not a good indicator of benthic/aquatic health. Going forward, what plans does EPA have to take this growing number of studies into account?

77. How, if at all, does EPA intend to convert a field-based study performed in Appalachian waters into a national standard?

Financial Assurance

On March 8, 2011, Senator Lisa Murkowski (D-Alaska) sent a letter jointly addressed to Secretary of the Interior Ken Salazar and Secretary of Agriculture Tom Vilsack regarding EPA's planned rulemaking under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to impose financial assurance regulations on the hardrock mining industry. The letter highlighted the history and effectiveness of the Bureau of Land Management (BLM) and U.S. Forest Service (USFS) financial assurance requirements. Expressing concern that EPA is moving forward without properly taking into consideration the existing financial assurance programs, Senator Murkowski posed a series of questions to Secretaries Salazar and Vilsack regarding whether EPA's rulemaking is warranted. One of those questions asked how many hardrock mining and beneficiation plans of operation had their agencies approved since 1990, and how many of those sites were placed on the CERCLA National Priorities List (NPL). On June 21, 2011, Robert Abbey, Director of BLM, responded that the bureau held \$1.7 billion dollars in financial assurances, 659 plans of operations authorized by BLM's Mining Law Administration Program had been authorized since 1990 and none of those sites had been placed on the CERCLA NPL. Secretary Vilsack replied on July 20, 2011 that his department had permitted 2,685 hardrock mines since 1990 and that none of those sites had been placed on the CERCLA NPL list.

78. Given the response from the Departments of Interior and Agriculture, what evidence does EPA have that additional financial assurance requirements under CERCLA are warranted for *currently* operating hardrock mining sites?

79. What steps has EPA taken to consider the BLM and USFS programs implementing financial assurance requirements on the hardrock mining industry to avoid unnecessary and costly duplication of existing federal programs?

Additionally, the Western Governors' Association (WGA) in Policy Resolution 11-4 on "Bonding for Mine Reclamation" expressed concern that "a new federal program could not only duplicate, but in fact supplant the state's existing and proven regulatory programs" for bonding of reclamation activities for hardrock mining. According to the WGA, "[t]he member states have a proven track record in regulating mine reclamation in the modern era, having developed appropriate statutory and regulatory controls, and are dedicating resources and staff to ensure responsible industry oversight." The WGA sent this policy resolution to EPA on Aug. 10, 2010, asking the agency to work in partnership with the states on this issue.

80. What has or is EPA doing to learn about and address the state pre-emption concerns voiced by the WGA in advance of issuing a proposed rule? Has EPA formally reached out to the WGA to forge a partnership on this issue?

Natural Gas Star Program

The emission factor applied to Completions with Hydraulic Fracturing remains an overestimate and an inappropriate use of Natural Gas Star data, and EPA has so far failed to incorporate a method of correctly using this data. The EPA staff bears a responsibility to the public to use the best available scientific data provided to them.

81. If confirmed, will you commit to adopting the scientific data and methodology provided to EPA during the Expert Review Period, and accordingly revise your emission factor?

EPA's 2013 Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2011 does not account for the flaring of gas wells where flaring is not required by state regulations, and therefore text in the inventory is incorrect and misleading. The assumption that flaring is not used where there is no state regulation mandating its use is not an accurate representation of industry practice.

82. Will the EPA commit to creating an alternate category for those wells that are flared, reflective of actual survey data provided in the URS Memo Data, to more accurately represent the industry practice of flaring completion emissions from wells using hydraulic fracturing?

TSCA

83. Is EPA still planning to issue a notice of proposed rulemaking under TSCA for chemicals used in hydraulic fracturing operations in light of the fact that EPA has generated and will continue to generate information on fracturing fluids as part of its study of hydraulic fracturing and has a wealth of other information regarding fracturing fluids available to it through FracFocus and a variety of other sources?

Natural Gas

Some environmental organizations filed comments on the DOE economic impact study of LNG exports that argued that DOE should examine the upstream environmental impacts of the natural gas that supplies the gas to the LNG export facilities. EPA did not file any comments on the DOE study and did not take the opportunity to weigh in on the point raised by the environmental organizations. Two regional EPA offices have filed comments on LNG exports projects calling for an EIS that assesses the upstream impact of the natural gas to the LNG export facility – basically taking the position of the environmental activists.

84. As EPA Administrator would you oppose DOE LNG export approvals if DOE did not change its established practice of deferring to FERC, as the lead NEPA agency, given that FERC has long-established practices of looking at a project's direct environmental impact but not the upstream impacts of those projects?

85. Testifying before Congress in 2011, EPA Administrator Lisa Jackson said that natural gas creates less air pollution than other fossil fuels, “so increasing America’s natural gas production is a good thing.” Do you agree with this statement and could you please explain why or why not?

QFRs for Gina McCarthy from Senator Barrasso:

1. EPA has the ability to conduct cost-benefit analysis that considers the impact of regulations on the economy, including the effects of job losses caused by the regulations and how increased costs ripple through society. EPA used this method for two major rules in 2005.

NERA, a nationally recognized consulting firm, recently conducted a study where they did this analysis for a number of recent EPA rules, including Utility MACT, and the Cross State Air Pollution Rule.

NERA's analysis demonstrates that under this EPA approved analysis tool, EPA is better able to inform Congress and the American public of the true costs of its regulations.

If confirmed, will you commit to do "whole economy modeling" on all pending Clean Air Act and Clean Water Act regulations?

2. Do you believe the severe weather events that have occurred over the last few years are a direct result of anthropogenic, man made climate change?

3. Do you believe we can predict what the weather will be in Wyoming or any other State 10, 20 or 50 years from now with any accuracy, and what the impact will be to the landscape from that weather?

4. With regard to question 3, if you cannot predict with any accuracy, how will U.S. taxpayer investments made today to protect communities decades from now, based on inaccurate computer models, guarantee any success?

5. Do you believe sue and settle agreements are an open and transparent way to make public policy that significantly impacts Americans?

6. Do you believe States and communities impacted by sue and settle agreements should have a say in court agreements that might severely impact them?

7. If confirmed, would you agree not to enter into closed-door settlements where the public and affected States are not a party to these agreements?

8. If confirmed, would you open up litigation to local stakeholders and give impacted States and communities a seat at the table before any final agreements are signed?

9. In a recent appropriations hearing on the House side, Assistant Secretary Jo-Ellen Darcy of the U.S. Army Corps of Engineers testified that her agency and yours had written regulatory language regarding redefining “waters of the United States.”

a) Is it your intent to increase the authority of the EPA beyond the current regulations and, if so, in what way?

b) Does the regulatory language increase the number of waters that will come under federal jurisdiction?

c) Does the regulatory language or the guidance wrap any isolated waters under Clean Water Act (CWA) jurisdiction?

d) When does the Corps and EPA intend to propose such a rulemaking?

e) Do you intend to finalize the guidance first? If so, what would be the point? Wouldn't the rulemaking make any such guidance moot?

f) Have you done an economic analysis on the rulemaking? If so, how much will it cost?

g) Did you evaluate it in terms of the entire Clean Water Act or just the 404 program, which is what you did for the proposed guidance?

h) Have you done an economic analysis on the rulemaking? How much is this guidance document projected to cost?

10. Do you believe there are waters that are beyond the jurisdiction of the CWA? If so, what are they?

11. What do you believe is the meaning of the phrase “significant nexus” as it relates to jurisdictional determinations under the CWA?

12. Many of our farmers and ranchers are concerned with the recent vigorous efforts by the EPA to re-write U.S. environmental policy through administrative rulemaking. Some agricultural interests claim that, in several of EPA’s efforts, the emphasis appears to be on ratcheting up a regulatory enforcement philosophy, rather than encouraging incentive-driven efforts to address the Nation’s water quality challenges.

If confirmed, how would you respond to this observation as Administrator? Do you believe collaborative, incentive-based approaches to water quality problems have merit or would you support a more regulatory compliance approach?

13. There is growing concern about so-called “closed door” settlements between federal agencies and environmental organizations who sue those agencies, often over minor administrative errors. By the time those settlements are approved, the plaintiffs have essentially been paid by our government for suing our government. In his January 21, 2009, Open Government Directive, President Obama instructed federal agency heads to promote openness in government by “establishing a system of transparency, public participation, and collaboration.” EPA has responded to the President’s directive by developing and implementing an Open Government Plan.

Can you tell us more about this plan, and do you think it could be improved by including a notification system that would immediately provide all stakeholders with timely and transparent access to information involving any legal action, or notice of intended legal action, against the EPA in advance of any “settlement” discussions?

14. Do you believe the statutory limits placed on EPA’s authority by Congress are important and should be respected when EPA promulgates rules and takes other actions?

15. As Administrator, will you continue to permit the promulgation of rules and the taking of actions that are outside the scope of EPA's statutory authority, or will you only allow such activities to be taken within the confines of authority delegated to EPA by Congress and, by extension, the American people?

16. As Assistant Administrator for EPA's OAR, you have had direct responsibility for promulgating the Mercury and Air Toxics Standards (MATS) for power plants. On March 20th 2012 before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety, you testified that "only a modest amount of generating capacity" -- 4,700 megawatts (MW) -- will become uneconomic to operate under MATS. This rule will cause 35,000 MW to retire, according to the Institute for Energy Research, and 42,000 MW to retire, according to Barclays.

Do you stand by your testimony that "only a modest amount" of coal-fired generating capacity will be forced to retire by EPA regulations? Or would you reconsider your testimony in light of more recent analyses and already announced retirements that show EPA's projections to be off by as much as 800 percent?

17. On March 20th, 2012 before the Senate Environment and Public Works Committee's Subcommittee on Clean Air and Nuclear Safety, you testified that MATS would have a "very small" impact on electricity rates, yet they have soared by 23 percent in the Mid-Atlantic region and 183 percent in the northern Ohio region from the 2014/2015 Delivery Year to the 2015/2016 Delivery Year. According to PJM Interconnection, this is due to "an unprecedented amount of planned generation retirements (more than 14,000 MW) driven largely by environmental regulations, which drove prices higher than last year's auction."

Do you stand by your testimony that MATS will have a "very small" impact on electricity rates? Or would you reconsider your testimony in light of market evidence that electricity rates have increased by up to 183 percent in response to EPA regulations?

18. The EPA stated in the Federal Register on February 16th, 2012 that the “great majority” of benefits from MATS will come from reductions in particulate matter, not mercury or air toxics. “The benefits of controlling mercury and air toxics comprise less than one ten-thousandths of the total benefits reported for the mercury and air toxics rule,” according to George Washington University Research Professor Susan Dudley’s testimony on April 17th of last year before the Senate Environment and Public Works Committee’s Subcommittee on Clean Air and Nuclear Safety. She stated “Ninety-nine percent of the benefits attributed to the MATS rule were derived by assigning high dollar values to reductions in emissions of fine particles (PM2.5), which are not the focus of this regulation and which are regulated elsewhere.”

You and other EPA officials decided to refer to this rule in the Federal Register on February 16th, 2012 as “in short as the Mercury and Air Toxics Standards (MATS).” But this rule really targets particulate matter emissions, not mercury and air toxics. Why did your team decide to label this rule as something it is not?

19. You and other EPA officials have repeatedly ignored congressional requests to make publicly-available the taxpayer-financed databases used to conduct the cost-benefit analysis for MATS. Do you believe Congress, stakeholders, and the American people can adequately review EPA’s cost-benefit analysis for MATS and other rules without access to the actual data upon which it rests?

20. As Administrator, would you advocate for requiring the federal government and/or other parties to consider, under NEPA or any other environmental law, greenhouse gas emissions produced outside the United States by any good exported from the United States? If yes, can you please explain the rationale behind that position and how you believe it would impact the American economy?

21. With regard to EPA's Clean Water Act Section 316(b) rulemaking for cooling water intake systems for existing electric utility plants, EPA's proposed rule would impose expensive new study, monitoring, and retrofit requirements on all existing facilities, including "baseload" facilities. These facilities are the foundation of our electric system and "peaking" facilities that are used more sparingly to meet periods of peak electricity use. But the peaking units may be used for as little as a few days a year when electricity demand is high, and it would be uneconomic to spend a great deal on money on them for studies and equipment that would be rarely used and would not provide commensurate environmental benefit. In an earlier version of the rule, EPA provided an exemption for such units. Yet in the current proposed rule, which is soon to be finalized, EPA eliminated the exemption. Would you consider reinstating that exemption or providing equivalent relief from the rule's requirements for peaking facilities so they can continue to perform their crucial reliability function?

22. EPA's proposed 316 (b) rule outlines a rigid schedule of expensive and time consuming studies that are required as an interim measure before a plant installs technology to comply with the rule's requirements. It is also my understanding that this set of interim measures would apply to facilities even if they announce they plan to retire prior to compliance deadlines. Why would we subject existing facilities to additional and unnecessary expenses if, in fact, they have announced retirement and ultimately would not be expected to comply with the rule because they no longer would be in operation? Will you ensure the final rule provides compliance relief for generation assets that announce retirement?

23. In EPA's proposed 316(b) rule, EPA has adopted starkly different approaches to managing "impingement" and "entrainment" at existing cooling water intake structures. For entrainment, EPA appropriately adopted a site-specific approach, recognizing that (a) existing facilities already have measures in place to protect fish, (b) further measures may or may not be needed, and (c) the costs, benefits, and feasibility of such measures have to be evaluated at each site. Yet for impingement, EPA adopted rigid, nationwide numeric criteria that appear unworkable and in many cases unnecessary. In a notice of data availability issued last year, EPA signaled that it would consider a more flexible approach for impingement. In the final rule that is due this summer, would you support replacing the original impingement proposal with a more flexible approach that pre-approves multiple technology options, allows facility owners to propose alternatives to those options, and provides site-specific relief where there are de minimis impingement or entrainment impacts on fishery resources or costs of additional measures would outweigh benefits?

24. In EPA's proposed 316(b) rule, EPA has correctly not required existing facilities to retrofit "closed cycle" systems such as cooling towers or cooling ponds if the facilities do not already have such systems, because such retrofits are not generally necessary, feasible, or cost effective. At the same time, facilities that do have closed-cycle systems have long been viewed as satisfying the requirements of section 316(b). Yet in the proposed rule, EPA has defined "closed cycle" cooling much more narrowly for existing facilities than EPA did for new facilities several years ago, thereby excluding a number of facilities. And even for the facilities that qualify, EPA is still imposing new study and impingement requirements. In the final rule that is due this summer, would you support a broader definition of closed-cycle cooling and measures that more fully view these facilities as compliant?

25. EPA is seeking to justify its costly proposed 316(b) rule, which would affect more than 1,260 power plants and industrial facilities nationwide, on the basis of a public opinion survey asking "how much" a random group of individuals would be willing to pay to reduce fish losses at intakes. This willingness-to-pay approach to determining "benefits" contrasts sharply with the far more traditional approach used by EPA in its earlier 316(b) rulemakings. The earlier analyses relied on actual market prices and costs incurred by individuals, rather than hypothetical questions in a public survey. The "willingness-to-pay" or "stated preference" survey is clearly intended to increase the anticipated benefits of the proposed rule. Yet such stated preference surveys are notoriously difficult to design and implement and often are very unreliable. Using such unreliable benefit estimates will inappropriately lead to cooling water controls that are neither necessary nor cost beneficial and that will not deliver the anticipated benefits but will materially affect compliance and consumer costs. Given all these problems, in the final rule that is due this summer, would you support withdrawing the survey and clarifying that the survey and its results are inappropriate to use in implementing the final rule?

26. Where do you stand on the proposed coal residuals regulation? Regulation as hazardous waste would mean important efforts to reuse or recycle material would be curtailed. Is a "one size fits all" policy for the nation really necessary, or would it better to let the states manage coal waste? Do you believe a system of state led oversight based on sound science would be much more preferable than the top-down approach currently proposed by EPA?

27. My home state of Wyoming is the largest coal producer in the country. I have deep concerns about the process for developing and implementing the regional haze program in Wyoming. Can you commit to a process that does not disadvantage generation or the coal based resource in Wyoming?

28. In your personal meeting with me, you often sympathized with the concerns I have regarding the impact of EPA regulations on jobs. However, you also expressed in many instances that you would look for flexibility, but you were bound by agency processes, and law. If you are concerned about the impact of EPA regulations on jobs and communities, I believe you should seek the flexibility you need from Congress through policy recommendations to help save these communities and jobs. What specific legislative changes would you recommend to provide flexibility to protect workers, families and communities from job losses that might occur as a result of EPA's regulations?

29. Some in EPA and outside activist groups have been critical of the work of the Small Business Administration's Office of Advocacy in playing a role in the evaluation EPA regulations to protect small business. If confirmed, what steps will you take to work with the Small Business Administration's Office of Advocacy to ensure that their role is respected and maintained?

30. Please explain why you decided to ignore your responsibilities as a federal trustee to the Navajo Nation during the development of the Utility MACT rule, when your offices had prior knowledge of the Navajo Nation's concerns about EPA regulatory impacts to Four Corners Power Plant and Navajo Generating Station; and when your offices had collaborated with the Navajo Nation in proposing and promulgating the Clean Air Mercury Rule? Since 2010, EPA has proposed new regulations that impact coal fired power plants, yet there has been very little communication between EPA and Navajo Nation about the Navajo Nation's desire to continue the use of coal for generating electricity and other purposes. Further EPA may be developing greenhouse gas and carbon dioxide regulations without consulting or understanding what impact this may have on Indian Country and tribes that rely on natural resources to fuel their economies.

31. Ms. McCarthy, what is your view of the EPA's responsibilities to consult with Indian Tribes about the potential impacts of these forthcoming regulations on the tribal economies that rely on non renewable natural resources?

32. On April 4, 2013, *Politico* reported that you continue to support the Renewable Fuel Standard (RFS). However, there is a growing recognition from people across industries and the political spectrum that the RFS is fundamentally broken and beyond reform.

The RFS has failed to result in large-scale production of advanced biofuels. It has failed to provide any meaningful environmental benefits, and in certain respects, has accelerated environmental degradation. The RFS has contributed to significant increases in feed and food prices which is hurting low-income people in this country and around the world.

The RFS has led EPA to approve E15 gasoline which threatens our nation's transportation and fueling infrastructure, and will almost certainly result in widespread litigation against engine manufacturers, refiners, and fuel marketers, among others. The RFS has facilitated widespread fraud in the marketing and sale of Renewable Identification Numbers (RINs). Finally, the RFS, and specifically the dramatic rise RIN prices, will significantly increase fuel costs for Americans.

- a) Is it true that you continue to support the RFS? If so, why?
- b) Do you consider the RFS a success?
- c) Do you believe Congress should repeal the RFS? If not, what changes to the RFS would you propose to Congress if confirmed?

Questions for the Record Submitted by Sen. Jeff Sessions
Confirmation Hearing for Gina McCarthy
Senate Committee on Environment & Public Works

General Questions: Transparency, Accountability & Cooperation with the States

1. Over-regulation harms American workers. Today, the United States has 3 million fewer jobs than in January 2008.
 - a. Do you commit to do everything within your authority as Administrator of the EPA to ensure that the United States economy is more, not less, productive?
 - b. Do you commit to do everything within your authority as Administrator of the EPA to ensure that more, not fewer, jobs are available for American workers?

2. I am the Ranking member of the Senate Subcommittee on Clean Air and Nuclear Safety. It is important that I have your commitment that EPA staff will provide briefings to my staff on a regular basis during the development of important new air regulations.
 - a. Will you commit to ensure that my staff receives regular updates and briefings on all pending major air regulations?
 - b. In particular, to the extent EPA seeks to initiate new rulemaking proceedings in light of the D.C. Circuit's recent vacatur of the Cross State Air Pollution Rule (CSAPR), will you commit to ensure that EPA provides me and/or my staff with regular briefings on the status of any EPA decisions or efforts related to the CSAPR?

3. I am concerned that EPA is not working as cooperatively with the States as it should under the law. That was the clear message of the D.C. Circuit in its recent decision striking down the CSAPR. I am concerned that EPA is not giving due deference to the States.
 - a. The Clean Air Act is based on a principle of **"cooperative federalism."** Do you agree?
 - b. Will you commit to sit down with State leaders—Governors, State Attorneys General, and State Environmental Agencies—to solicit their ideas for improving the Clean Air Act, including steps that can be taken to reduce red-tape, increase efficiencies, reduce costs, and minimize economic impacts?

4. The Clean Air Act has not been updated since 1990—23 years ago.

a. Do you agree that the Clean Air Act should be modernized to take into account economic impacts when establishing air quality standards?

b. What specific amendments to the Clean Air Act would you recommend?

5. EPA has been increasingly relying on a tactic known as “sue and settle” with non-governmental organizations (NGOs) over issues with nationwide significance. In many of these cases, an NGO notifies EPA of its intent to sue the agency over an alleged failure by EPA to take a particular action. In many instances, EPA has negotiated settlements with these NGOs with any advance notice to impacted stakeholders or the States. Then, the NGO takes the perfunctory step of filing a lawsuit against EPA along with a proposed consent decree for the Court's approval; and, then, and only then, do affected parties, including State regulatory agencies, become aware of the often severe consequences to them of the negotiated settlement. An example of this is EPA's recent 36-State SIP call regarding startup, shutdown, and malfunction (SSM), which was discussed in my recent letter to you.

a. Do you believe that State agencies should have an opportunity to participate in negotiating terms of a settlement when the effects are greatest upon them as the primary regulatory authorities?

b. Do you believe other impacted stakeholders should be notified before EPA initiates settlement discussions in these circumstances and that those impacted stakeholders should be given an opportunity to participate in the settlement process?

c. Will you commit to increase transparency in this process?

d. Do you agree that this transparency should include public, online disclosure of the use of federal funds to cover any plaintiffs' attorneys fees or other legal costs in civil actions filed under Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2); Section 505(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. § 1365(a)(2); or Section 7000(a)(2) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(2); or other similar statutes?

e. With respect to the SSM issue, should EPA analyze whether the nationwide costs to impacted industries of the action are sufficient to trigger the necessity of OMB review?

f. With respect to the SSM issue, should EPA be required to show that air quality is harmed by SSM excursions before calling for States to revise their SIPs?

6. I am concerned about EPA's failure to fully defend the laws and regulations of the United States. That is partly a concern for EPA, and partly a concern for the Department of Justice. But there is no doubt that the Administration has not always defended existing laws and regulations to the fullest extent possible. For example, in June 2011 when you appeared before our committee, I asked you about EPA's plans to reconsider the ozone standards. You explained: "Senator, we are moving forward with the five-year review of ozone, but when Administrator Jackson came into office, we were facing litigation [regarding] the prior administration's decision to make a determination that 75 ppb was the appropriate level for ozone. ... The Administrator decided that rather than litigate, she would work with the litigants to put that litigation on hold; she would revisit the science. ... [and] rather than to defend that standard and to move forward with it, [EPA decided] to reconsider that..." Fortunately, after a bipartisan group of Senators raised serious concerns about EPA's ozone reconsideration—an effort that I was glad to lead with Sen. Landrieu, the President directed EPA to not finalize a new ozone standard at that time.

- a. Would you agree that, in light of the President's subsequent decision to forego changing the ozone standard, EPA Administrator Jackson made the wrong decision to "reconsider" the ozone standard instead of, in your words, to "defend that standard"?
- b. Did EPA incur significant costs as part of the ozone reconsideration process; if so, how much?
- c. Do you agree that the ozone reconsideration process created significant regulatory uncertainty throughout the U.S. economy that could have been avoided if EPA had chosen to defend the standard, as ultimately decided by the President?

7. Another recent example of the “sue and settle” problem involves EPA’s recent decision to propose to eliminate a 40-year old regulatory exemption for emissions during periods of startup, shutdown, and malfunction (SSM). Senator Vitter and I recently wrote you about this topic, and on the issue of EPA’s failure to defend the law, our letter stated: “In November 2011, the Environmental Protection Agency (EPA) and the Sierra Club negotiated a settlement whereby EPA unilaterally agreed to respond to a petition filed by Sierra Club seeking the elimination of a longstanding Clean Air Act (CAA) exemption for excess emissions during periods of startup, shutdown, and malfunction (“SSM”). The EPA went out of its way further to deny the participation of the States, and other affected parties. Oddly, it appears that, instead of defending EPA’s own regulations and the SSM provisions in the EPA-approved air programs of 39 states, EPA simply agreed to include an obligation to respond to the petition in the settlement of an entirely separate lawsuit. In other words, EPA went out of its way to resolve the SSM petition in a coordinated settlement with the Sierra Club. Our concerns with the Agency’s sue and settle tactics are well documented—these settlement agreements are often accomplished in a closed door fashion that contravenes the Executive Branch’s solemn obligation to defend the law, avoids transparency and accountability, excludes impacted parties, and often results in the federal government paying the legal bills of these special interest groups at taxpayer expense. The circumstance under which EPA has agreed to initiate this new rulemaking reaffirms a pattern and practice of circumventing transparency.”

- a. Please list all instances since January 2009 where EPA decided to settle a lawsuit challenging the validity of a law or regulation that had been in effect before January 20, 2009.
 - b. Please include all disbursements of federal funds to cover plaintiffs’ attorney fees or legal costs in such cases.
 - c. Do you commit to defend all existing statutes and regulations to the extent required by law?
8. I am told that EPA often issues guidance on important issues when rules would be appropriate. EPA staff then treats this guidance as if it were rules, when in fact guidance is just one path States or the regulated community can take to reach EPA's desired goal.
- a. When, in your view, is it appropriate for EPA to issue agency guidance documents and what procedures should be followed in those circumstances?
 - b. When, in your view, it is appropriate for EPA to initiate rulemaking proceedings and what procedures should be followed in those circumstances?

c. What will you do to increase the use of rulemaking rather than guidance documents and to impart to EPA staff the proper use of guidance documents?

9. EPA often goes outside the bounds of its statutory authority to achieve ends it deems desirable. Examples include a recent push to regulate water quantity (flow) as a pollutant and the attempt to add unwarranted conditions to coal mining permits. What will you do to ensure that EPA stays within the bounds of its authority?

Budget

10. I am the Ranking member of the Senate Budget Committee. I am very concerned about where EPA places its priorities, as reflected in the Administration's budget requests over the past several years. Your budgets have tended to reduce funding for programs at the state level in favor of increasing funding for EPA regulations. For example, the largest reductions in EPA programs under the President's latest budget proposal come from the drinking water and clean water state revolving funds, which provide assistance to states for water programs. The Brownfields program would also be cut under the President's proposal. Yet, the President's budget proposes increasing spending on EPA Clean Air Act regulatory programs.

a. Can you please justify that rationale for these EPA budget priorities?

b. Within EPA's annual budget request, will you commit to maximize EPA's financial commitment to state-level programs?

11. Under the Budget Control Act, sequestration has resulted in across-the-board cuts to an expansive list of accounts, including those at EPA, and lowered discretionary appropriations levels for the next several years. Can you please describe your priorities as Administrator to deal with the impact of sequestration?

Air Quality

12. Air quality in the United States has improved significantly over the past 40 years. The Clean Air Act and the clean air laws of the States deserve great credit for these improvements, as do the voluntary efforts of millions of Americans and businesses. Air quality is not a political issue. We all want our friends, families, and fellow Americans to breathe clean air. A recent report about Alabama emissions[1] found that since 1999:

- a. NOx emissions have dropped more than 35% overall—and more than 65% for coal-fired power plants. Do you agree that, even without additional new regulations from EPA on NOx, this downward trajectory will continue?
- b. SO2 emissions have dropped more than 50% overall—and more than 60% for coal-fired power plants. Do you agree that, even without additional new regulations from EPA on SO2, this downward trajectory will continue?
- c. PM2.5 emissions have decreased by more than 30% overall. Do you agree that, even without additional new regulations from EPA on PM2.5, this downward trajectory will continue?
- d. Ozone levels in Alabama are also on a downward trend. Do you believe an even tighter ozone standard is necessary? Did you support EPA's decision to reconsider the ozone standard in 2011, and did you agree with the President's decision to forego changing the ozone standard at that time?
- e. For these pollutants, the numbers are on a downward trajectory even without new EPA air regulations regarding those pollutants. Do you agree?

13. As the Assistant Administrator in charge of EPA's air programs since 2009, were you the principal architect of (that is, the person primarily responsible for) the Administration's efforts on Boiler MACT, Utility MACT/MATS, Greenhouse Gas NSPS, Ozone, PM2.5, and the Cross-State Air Rule?

14. I have been advised that, several years ago, EPA in conjunction with the States devised a new formula for allocating State and Tribal Air Grants (STAG grants/105 grants) to the ten EPA regions. This new allocation scheme was necessary, I am told, because no adjustments had been made to it for years, resulting in a substantial misallocation of resources. In Region IV, which includes the State of Alabama, the new formula would have resulted in a 25% increase in STAG/105 funds. I am told that EPA planned to transition into the revised scheme beginning in FY2012. However, this effort has apparently not been implemented. Why has the new allocation program not been implemented, and do you support immediate use of the new allocation scheme? When do you anticipate EPA will implement the new funding scheme?

15. States justifiably should expect that, when reductions in air pollutants result in areas transitioning from non-attainment to attainment for the air quality standards, this success should be recognized by EPA quickly by completing the formal re-designations. My understanding is that EPA has often taken several years to complete this process.

- a. Do you agree that clean air attainment designations should be formally adopted as soon as possible when the data show that air standards have been met?
- b. What will you do to insure that EPA acts quickly to complete re-designation actions, given the immediate job growth implications of these actions?

16. I have been advised that EPA has, in several instances, illegally made unilateral revisions to State SIP's when the proper procedure was through a SIP Call.

- a. Please explain how you determine if a SIP call or a FIP should be used.
- b. Will you limit the use of FIPs to the situations actually anticipated in the CAA?

17. You oversaw development of "Utility MACT," also referred to as the Mercury and Air Toxics Standards (MATS). Testifying before Congress, you stated that the MATS rule would lead to the loss of only a "modest amount of generating capacity." However, according to the Institute for Energy Research, the MATS rule will result in at least 35,000 MW closing and Barclay's estimates that 42,000 MW will close because of MATS. Your own estimates fall significantly short of those estimates.

- a. Do you agree that the United States is losing some of its coal-fired generating capacity as a result of recent EPA regulations?

- b. Why were EPA's estimates for the impact on the electricity generating sector so much different than those identified by Barclay's and the Institute for Energy Research?

18. In the Utility MACT proposal, EPA stated that: "EGUs are the subject of several rulemaking efforts that either are or will soon be underway....EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies. ... Thus, EPA recognizes that it needs to approach these rulemakings, to the extent that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health benefits that the rulemakings must achieve. The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings....The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking."

- a. Does EPA intend to follow through on this commitment and provide a forum in which EPA notifies utilities of all of the impending power sector regulations and discusses ways for industry to comply with all of these regulations in a least cost fashion?

- b. Can you give a timeframe at which time this process will begin?

19. I have been advised that, as a general matter, market-based approaches to reducing emissions of traditional air pollutants have proven to be more cost-effective than command-and-control approaches.

- a. Do you agree?

- b. It has been said that NOx and SO2 from Electric Utility Fuel Combustion sources show significant decreases over time as a result of the Acid Rain Program, NOx Budget Trading Program, and CAIR control implementation. Do you agree?

Brick MACT

20. We understand that EPA is currently evaluating whether to finalize a consent decree with the Sierra Club for the issuance of new MACT standards for the brick industry. EPA began the rulemaking process for the second MACT several years ago, requiring two sets of information collection requests (ICRs) to be completed by the industry. However, EPA recently proposed a new schedule whereby the rule would be finalized in July 2014. I am concerned that the proposed schedule for this new Brick MACT is too short to allow meaningful review of brick industry emissions, how the proposed rule would affect the economic survival of the brick industry - especially with respect to impacted small businesses - and whether the proposed rule would provide discernible environmental and health benefits.

- a. How did EPA arrive at the Brick MACT schedule contained in the proposed consent decree?
- b. Does EPA's schedule allow for adequate consideration of the Small Business Administration's (SBA) Small Business Panel review pursuant to SBREFA?
- c. What emissions reductions would be achieved pursuant to full implementation of the proposed standards?
- d. What are the potential economic impacts and costs to the domestic US brick industry related to the proposed standards?
- e. How would the costs of these new standards compare, on a per-ton basis, with other industries recently subjected to new MACT standards?

21. The brick industry was subject to a Brick MACT issued in 2003. The industry came into compliance with that MACT (and continues to comply) at a cumulative cost upward of \$100 million. This MACT was vacated by the D.C. Circuit in 2007, but many of the controls installed by the brick industry remain in place. I am told that these new controls are now being used to establish a new "floor" for brick industry emissions. This "MACT on MACT" situation (i.e. full compliance with a MACT standard for almost a year before the rule was vacated) is very concerning to brick manufacturers around the country.

- a. What other industries have been subject to successive rounds of regulation similar to the situation the brick industry now finds itself?

- b. What other industries have installed emissions controls pursuant to an EPA requirement then had those controls used to establish more stringent emissions limitations within the operational lifetime of the previously installed control equipment?
- c. What steps will EPA take to ensure that controls installed in good faith are not needlessly removed before the end of their useful life?
- d. Why would EPA propose standards that do not utilize the full discretionary power granted by the Clean Air Act, such as the ability to create subcategories or distinguish among sizes, types and classes within a category or subcategory to minimize or eliminate that cost and economic impacts that do not create commensurate environmental benefit?

22. I am aware that the EPA is considering whether a health-based standard is possible for the brick industry. I also understand that the brick industry has supplied you with all information necessary to evaluate a health-based compliance alternative for every major source.

- a. What are the impediments to establishing a health-based rule for this industry comprised of a large number of small businesses, and how could those impediments be overcome?
- b. An emission standard is broadly defined in the Clean Air Act. Why would EPA look to a single facility to establish the emission level for all facilities to meet, rather than consider a health-based metric as a possible emission standard format?

Climate Change

23. Do you believe Congress intended to give EPA the authority to regulate emissions of CO₂ as a “pollutant” when it enacted the Clean Air Act?

24. I am told that China is the world’s largest producer of CO₂, and that CO₂ levels have been steadily declining in the United States in recent years. EPA Administrator Lisa Jackson testified at a July 7, 2009 Senate EPW hearing that “U.S. action alone will not impact world CO₂ levels.” Do you agree that, even if the United States reduces CO₂ emissions in line with legislative proposals in recent Congresses, such U.S. action alone would have little or no impact on global average temperatures?

25. During the Administration’s first term, EPA promulgated an endangerment finding and adopted GHG regulations for motor vehicles. It also proposed GHG NSPS for the power sector.

- a. What other areas of the economy can we expect GHG regulations during your tenure as Administrator?
- b. What standard is EPA going to apply in determining what sectors GHG regulations should apply to?

26. On December 4, 2012, I wrote EPA Administrator Lisa Jackson regarding the President's statement that "the temperature around the globe is increasing faster than was predicted even 10 years ago." I asked EPA to provide the specific data supporting the President's assertion along with a "chart of the actual global average temperature increases since 1979 [] versus the latest IPCC predictions..." You responded in a letter dated February 14, 2013, by asserting that "there are multiple lines of evidence that clearly demonstrate that average global temperatures are rising..." yet you did not provide any data relating to average global temperatures.

- a. Will you provide me with data showing actual global average temperatures since 1979 versus IPCC predictions, as was requested in my letter?
- b. Your letter also states that "2012 set a new record high for average temperatures *in the United States*." Do you agree that *global* temperature averages are more relevant for evaluating climate change than record high temperatures for a single year in a single country?
- c. A March 30, 2013 article in *The Economist* stated: "Over the past 15 years, air temperatures at the Earth's surface have been flat while greenhouse-gas emissions have continued to soar..." Is this statement correct?
- d. In your letter, you stated that "only looking at 10 years of a single dataset cannot provide a full picture of climate change trends, and should also not be the sole test by which to judge the usefulness of climate models in either simulating past climates or projecting further climate change." What is the best test for judging the usefulness of a climate model? Should policymakers rely on climate models that have over-predicted the degree of warming every year since at least 1990?

e. Your letter provides a series of charts (from NOAA's *State of the Climate in 2009* report) related to land surface air temperatures, sea surface temperatures, marine air temperatures, tropospheric temperatures, and stratospheric temperatures. Importantly, while you did not provide the requested chart comparing global temperature averages that correlate to the global temperature averages predicted by the IPCC, the charts you provided are, nonetheless, intriguing because all of these charts show no increases in temperatures for at least the past decade. Do you agree that the data for each these charts shows no increases in these temperature sets for at least the past decade? Of these temperature data sets, which one was the President referring to when he said that "temperature around the globe is increasing faster than was predicted even 10 years ago"?

Water Quality

27. I am concerned about the expansive interpretation the current Administration gives to the jurisdictional term "waters of the United States." In your opinion, do non-navigable streams constitute "waters of the United States," as originally intended by Congress when it enacted the Clean Water Act? In your opinion, do isolated ponds without significant hydrological connections to navigable waters constitute "waters of the United States," as originally intended by Congress when it enacted the Clean Water Act?

28. I understand EPA is in the process of developing a Section 316(b) rule.

a. Do you support a technology-based standard for the Section 316(b) rule?

b. I am told that the EPA Water Office conducted a willingness -to-pay survey for the 316(b) rule to monetize benefits, noting that this methodology is widely used and supported by the academic literature. It is my understanding that this literature specifies that a given survey should focus on one or two rare species and be geographically restricted to the area where these species live. It is my understanding that the EPA survey, on the other hand, involves all species in the waters of the United States nationwide, including common species with a commercial market. When the 316(b) survey results are published, will EPA specify that its survey was not conducted according to the accepted methodology?

c. Will states be required to use EPA's survey results in 316(b) BTA [best technology available] decision-making?

29. I am concerned about EPA's continuation of efforts to establish effluent limitation guidelines (ELG) for **coalbed methane** (CBM) production. As outlined in my letter to the EPA dated May 10, 2012, the ELG process, which started in 2008, cannot be justified in light of prevailing economic conditions and the price of natural gas in today's market. Natural gas prices are much lower now than in 2008 when EPA started this process. Moreover, I am advised that there is no need for these ELGs because Alabama has successfully managed the National Pollutant Discharge Elimination System (NPDES) for more than 25 years with EPA regional supervision, and that an ELG is even less necessary now because of decreased gas and water production. A CBM ELG would threaten production across the country and could even end production in Alabama, thereby harming the great progress this country has made toward energy independence and progress in domestic natural gas production. I appreciate EPA's response dated June 12, 2012, that acknowledges the ELG must be economically achievable. The EPA has been working on a proposed rule regarding effluent limitation guidelines (ELG) for CBM since 2008. During that time, natural gas prices have decreased significantly. I am told that this dynamic renders a CBM ELG economically unachievable. Rather than devoting additional time and resources to an effort that the EPA cannot justify - economically or on the merits - I encourage you to abandon any efforts to establish a CBM ELG. Please provide an update on this process. Does EPA intend to continue this ELG process even though EPA acknowledges that it cannot issue new guidelines if they are economically unachievable? What are the costs to EPA of the entire ELG process for coalbed methane? I am told that EPA has actively been working on the CBM ELG since 2007 including an extensive survey of companies and that, to date, no economic information has been provided to the public even though the Clean Water Act requires an economic feasibility test. When can stakeholders expect to see such an analysis?

Waste

30. EPA released proposals to further regulate coal fly ash in 2010, but has since failed to give any indication on how it might move forward. One of the proposals that EPA put forth would regulate coal fly ash as a "hazardous material" (under Subtitle C of RCRA). The uncertainty created by EPA's proposal and subsequent years of inaction are adversely impacting many industries including those that reuse and recycle coal fly ash to make safe products like cement, wallboard and carpet backing. These industries not only provide valuable products for Americans all over the country, but they help avoid disposing of coal fly ash in landfills and other impoundments. To what extent is EPA still considering this "hazardous materials" treatment for coal fly ash? Do you support regulating coal fly ash instead under Subtitle D and treat it as a "solid waste"? When can we expect EPA to announce a final determination on this important matter?

Nuclear Radiation Monitoring (RadNet)

31. In EPA's response to the accident at the Fukushima Daiichi nuclear power plant in Japan, I am told that the RadNet system carried out its mission "to monitor environmental radioactivity in the United States in order to provide high quality data for assessing public exposure and environmental impacts resulting from nuclear emergencies." In particular, my understanding is that the timely, comprehensive and publicly accessible monitoring data generated from RadNet provided a factual basis for federal and state governments to reassure the American people that levels of radioactivity reaching the United States from Fukushima were "hundreds of times below levels of concern." As recognized at the time of inception of the RadNet system, it would be impractical to attempt to stand up such a monitoring system only in the event of an actual nuclear emergency. This is particularly true considering the need to make near-term assessments of potential risks and formulate protective actions, if needed, to protect public health. In addition, I am told that maintaining RadNet in a monitoring mode is necessary to maintain data on ambient levels of radiation in the environment for baseline and trend analysis, as well as in assuring continual readiness, including maintaining equipment and training personnel to respond rapidly to an event. Nevertheless, I am also told that some shortcomings in the RadNet system were noted during the Fukushima event and thereafter. What is needed to assure that the RadNet system will be fully maintained at a high level of readiness? What has EPA learned from the Fukushima event in regard to potential improvements to the system? More generally, what has EPA learned from the Fukushima event in regard to our nation's capability to monitor and analyze radiation in real-time to be able to more effectively fulfill its mission?

^[1] [http://www.americaspower.org/sites/default/files/may -issues-policies/States/AQ -Trends-Summary -\(Alabama\).pdf](http://www.americaspower.org/sites/default/files/may%20-%20issues-policies/States/AQ%20-Trends-Summary%20-(Alabama).pdf)

Issue	Question
Sacketts	<p>More than a year after the Supreme Court ruled unanimously against the EPA in the <i>Sackett</i> case, your agency continues its relentless harassment of the Sackett family in Idaho. In fact, for six years—and using an expansive view of power under the Clean Water Act--EPA has prevented the Sacketts from completing the construction of their dream home. It is unclear how exactly EPA's assertion of regulatory jurisdiction over the Sacketts would further the Clean Water Act's environmental objectives, especially given that the Sacketts have completed all the necessary local permitting. Given the toll this has taken on the Sackett family and the message it sends to small landowners across America, isn't it time for EPA to move on to higher priorities? When will your agency's harassment of the Sacketts cease?</p>
Logging Roads	<p>Over the past couple of years, I have worked with a bi-partisan group of Senators to address the Ninth Circuit's 2011 ruling that forest roads are subject to a mandatory permit requirement under EPA's point source rules. Our legislation would codify into law EPA's 37-year policy that that forest management and associated forest roads are nonpoint sources under the Clean Water Act best regulated through state-adopted Best Management Practices. The litigation threatens the rural road network which is owned and managed, in large part, by counties, states and federal agencies. This is a priority and there is bi-partisan support to address this issue. While the U.S. Supreme Court recently ruled favorably on the mandatory permit issue, the court left open the question of forest roads as point sources of pollution. How will the agency comply with the recent Supreme Court rulings? Do I have your commitment that the EPA will work in cooperation with Congress as it develops a statutory fix for forest roads as point sources?</p>

USDA-EPA Biotech Crop Approvals	<p>The US coordinated framework for the regulation of biotechnology was created to ensure environmental protection and consumer safety. This framework is the basis for a science based system and along with later laws that apply to EPA, such as the Pesticide Registration Improvement Act (PRIA), provide a predictable regulatory pathway across multiple government agencies for innovative new technologies to be put in the hands of American farmers. Given this Administration's policy positions supportive of development and use of biotechnology, including those articulated in the Bioeconomy Blueprint in April 2012 and commitment to transparency and science based decision making, I am troubled by recent delays in the regulatory process and impact on our agricultural competitiveness. Rather than embracing the coordinated framework, the EPA instead continues to operate under an unwritten policy that resists interagency coordination and ignores EPA's timelines under PRIA. This is especially important with respect to the approval of chemistries when they are tied to a deregulation of a biotech trait at USDA. How do you propose to deal with EPA's lack of timely chemistry approval with the respect to biotech traits given the administration's clear position on biotechnology?</p>
AG	<p>Many of our farmers and ranchers are concerned with the recent vigorous efforts by the EPA to re-write U.S. environmental policy through administrative rulemaking. Some agricultural interests claim that, in several of EPA's efforts, the emphasis appears to be on ratcheting up a regulatory enforcement philosophy, rather than encouraging incentive-driven efforts to address the Nation's water quality challenges. If confirmed, how would you respond to this observation as Administrator? Do you believe collaborative, incentive-based approaches to water quality problems have merit or would you support a more regulatory compliance approach?</p>
Sacketts	see questions

Boise River, Dixie Drain	<p>EPA has historically supported implementation and use of water quality trading as an innovative approach to achieve water quality goals more efficiently. As you know, trading is based on the fact that sources in a watershed can face very different costs to control the same pollutant. Trading programs allow facilities facing higher pollution control costs to meet their regulatory obligations by purchasing environmentally equivalent (or superior) pollution reductions from another source at lower cost, thus achieving the same water quality improvement at lower overall cost. In Idaho, for example, the Boise River watershed represents a unique opportunity to reduce non-point source pollutants coming from area agriculture communities to significantly lower costs for downstream municipalities to achieve even higher levels of pollution control. Given the success of trading mechanisms in the air program, would you support a trading structure for water quality improvements such as in the Boise River watershed? If water quality trading does not work everywhere, can the agency prioritize areas where water quality trading mechanisms could achieve cost effective environmental results?</p>
Regional Haze	<p>The Air Pollution Cost Manual currently used by EPA in estimating costs for regional haze and other “best available retrofit technology (BART) determinations was published in 2002. Costs for designing, engineering and installing controls obviously have increased significantly since then. Given that the current cost manual was published over a decade ago, is it out-of-date? What steps are being taken by EPA to update it? Doesn’t the use of an outdated cost manual increase the likelihood that EPA is underestimating regional haze compliance costs?</p>
Regional Haze	<p>EPA uses an air dispersion model, called CALPUFF Version 5.8, to assess projected improvements in visibility from proposed NOx retrofit technologies. How does EPA respond to scholarly, peer-reviewed studies asserting that CALPUFF Version 5.8 overestimates visibility improvements? What does EPA need to do to update CALPUFF Version 5.8? Is this underway? Why is EPA not allowing the use of more recent versions of CALPUFF, such as Version 6.4?</p>

Natural gas	<p>A large number of plants are expected to retire in 2015/16 – as the economy recovers and electric demand recovers. Experts expect regional problems because there are areas not served by natural gas pipelines where needed infrastructure may not be able to be put in place in this time frame or where replacement plants cannot be permitted and built within this time frame. MISO has done an analysis that shows 9% of capacity (12.9 GW at last estimate) is closing and there is not sufficient gas infrastructure to serve existing demand let alone new demand. Did EPA examine natural gas availability (via infrastructure such as pipelines and permitting timelines) when you issued the utility MATS rule, CASPR and the PM NAAQS and NSPS for GHGs?</p>
Chemicals	<p>Q11: I understand EPA is conducting an evaluation of how well the EDSP Tier 1 screening methods and Battery actually performed.</p> <ul style="list-style-type: none"> - If certain methods are found to be flawed or aren't performing adequately, will EPA make the necessary adjustments to the methods or test Battery before requiring additional substances to undergo EDSP Tier 1 screening? - What challenges does EPA see in this next phase? - What lessons has EPA drawn from its implementation of the EDSP program to date?
Chemicals	<p>Q12: EPA's endocrine disruptor regulatory program is risk based, which allows EPA to set safe levels of exposures based on a determination of both hazard and exposure.</p> <ul style="list-style-type: none"> - Do you agree that a risk-based approach is more scientifically sound than a hazard based approach? - Do you think this approach provides EPA adequate authority for addressing the "endocrine disruptor" issue?

Water Reuse	<p>Q16: The Definition of Solid Waste (DSW) rule was finalized in December 2008. The rule permits certain valuable secondary material streams that are beneficially reclaimed, such as spent catalysts and spent solvents, to be excluded from RCRA Subtitle C requirements. The reclamation process must be either (1) under the control of the generator of the materials, or (2) the materials may be transferred by the generator to another person or company for reclamation. The 2008 rule was challenged by the Sierra Club but the case was put in abeyance after EPA agreed in a settlement with the Sierra Club that it would reconsider parts of the rule. The reconsidered rule was proposed for comment in July 2011. In that rule EPA proposed to take away the transfer based exclusion and proposed numerous additional requirements and conditions on the recycling and reclamation of valuable secondary materials. The 2011 reconsidered proposed rule creates little to no incentive for parties to recycle or reclaim secondary materials. Even more problematic, EPA has requested comment on subjecting 32 regulatory exclusions or exemptions that have been in existence for decades and have become part of manufacturing operations, for example, the closed-loop recycling exclusion, to a new level of scrutiny, and additional recordkeeping and notification requirements.</p> <ul style="list-style-type: none"> - Do you agree that EPA should increase incentives for reuse/recycling, since incentives for recycling not only divert hazardous wastes from landfills and incinerators, but also allow the manufacture of valuable products? - Do you agree that the increased burden of the proposed DSW rule will tend to drive wastes that are currently recycled to disposal, which directly conflicts with the foundation of RCRA — reduce waste through recycling? - EPA is still at the proposal stage on the DSW rule. The proposal does not promote an “all-of-the-above” national energy strategy consistent with the President’s stated objectives. Will you commit to reexamine the rule to ensure that it is based on sound scientific data, that it will decrease the burden of facility waste management and increase incentives to recycle materials to recover valuable waste streams?
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Financial Assurance	<p>On March 8, 2011, Senator Lisa Murkowski (D-Alaska) sent a letter jointly addressed to Secretary of the Interior Ken Salazar and Secretary of Agriculture Tom Vilsack regarding EPA's planned rulemaking under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to impose financial assurance regulations on the hardrock mining industry. The letter highlighted the history and effectiveness of the Bureau of Land Management (BLM) and U.S. Forest Service (USFS) financial assurance requirements. Expressing concern that EPA is moving forward without properly taking into consideration the existing financial assurance programs, Senator Murkowski posed a series of questions to Secretaries Salazar and Vilsack regarding whether EPA's rulemaking is warranted. One of those questions asked how many hardrock mining and beneficiation plans of operation had their agencies approved since 1990, and how many of those sites were placed on the CERCLA National Priorities List (NPL). On June 21, 2011, Robert Abbey, Director of BLM, responded that the bureau held \$1.7 billion dollars in financial assurances, 659 plans of operations authorized by BLM's Mining Law Administration Program had been authorized since 1990 and none of those sites had been placed on the CERCLA NPL. Secretary Vilsack replied on July 20, 2011 that his department had permitted 2,685 hardrock mines since 1990 and that none of those sites had been placed on the CERCLA NPL list. a. Given the response from the Departments of Interior and Agriculture, what evidence does EPA have that additional financial assurance requirements under CERCLA are warranted for currently operating hardrock mining sites?</p>
Financial Assurance	<p>What steps has EPA taken to consider the BLM and USFS programs implementing financial assurance requirements on the hardrock mining industry to avoid unnecessary and costly duplication of existing federal programs?</p>

Financial Assurance	<p>Additionally, the Western Governors' Association (WGA) in Policy Resolution 11-4 on "Bonding for Mine Reclamation" expressed concern that "a new federal program could not only duplicate, but in fact supplant the state's existing and proven regulatory programs" for bonding of reclamation activities for hardrock mining. According to the WGA, "[t]he member states have a proven track record in regulating mine reclamation in the modern era, having developed appropriate statutory and regulatory controls, and are dedicating resources and staff to ensure responsible industry oversight." The WGA sent this policy resolution to EPA on Aug. 10, 2010, asking the agency to work in partnership with the states on this issue. c. What has or is EPA doing to learn about and address the state pre-emption concerns voiced by the WGA in advance of issuing a proposed rule? Has EPA formally reached out to the WGA to forge a partnership on this issue?</p>
	<p>1. On April 9, 2013, EPA notified my office that the Agency is suspending its action to compel my constituent, Tru Prodigy, to change its product trade name that was previously approved by the Agency and that is similar to trade names used by manufacturers of comparable products. I presume no further agency action will be taken on this matter, especially in light of the significant sums invested by Tru Prodigy to support its product trade name following the Agency's initial approval.</p> <p>a. Will you assure me that my office will be informed in advance of any action to change its position on this matter, that any new policy would apply uniformly to all trade names of a similar nature, and that any entity using a trade name previously approved by the EPA will not be forced to abandon use of that name?</p>

Senator Roger Wicker

National Ambient Air Quality Standards

1. Should our nation's steady progress in making reductions to air pollution be considered in the NAAQS revision process?
2. NAAQS regulations are purely to benefit public health and not economic cost, but has the EPA considered how health is negatively impacted by the job losses caused by these regulations?
3. Will you be accepting comment on maintaining the current ozone standard once you propose the new rule? Do you believe it is appropriate to consider only new proposals that lower the current standard? Doesn't that prevent EPA from considering science showing that the current standard or even a higher standard is sufficient to maintain public health?
4. Can the President tell EPA where to set national ambient air quality standards based on policy considerations?
 - a. Since the President directed EPA not to reconsider the 2008 ozone standard, can he also direct EPA to take additional time to consider revisions to NAAQS?
5. How do you view the importance of input from the states when formulating standards and reviewing implementation?
6. If you do lower the standard for ozone, what will be the compliance burden on the states?
7. Do you believe that the NAAQS review and implementation process will ever catch up to its statutory 5 year deadlines for review? What steps would you take to have the timing of the NAAQS program comply with the Clean Air Act?

If potential a new standards is in ranges considered in 2010 (70 to 60 ppb), it could throw hundreds of counties across America out of compliance, stifling investment, transportation funding, economic growth, and job growth. It threatens to create what some are calling “No New Jobs Zones” across the country. According to the National Association of Manufacturers, it could cost up to 7.3 million jobs, and result in annual attainment costs and reduced GDP of \$1.7 trillion by 2020.

8. Please identify language in Section 109 of the Clean Air Act that specifically prohibits the consideration of costs in the setting of National Ambient Air Quality Standards?

9. As part of the standard setting process, is EPA prevented from comparing the health and other effects of a considered NAAQS standard with the health and other effects of unemployment and economic dislocation?

10. Leaving aside the question of cost, how does EPA assess the health benefits associated with economic dislocation caused or likely to be caused by the new standards? How are they quantified when making health-based assessments for revised National Ambient Air Quality Standards?

11. How will you work with the CDC and others outside the agency to ensure you are using the very best science before you set the new ozone standard?

E-15 / Ethanol

Earlier this year I introduced with Senator Vitter a bill to reverse an EPA regulation that would lead to an increase in the amount of ethanol in gasoline. Ethanol is less energy efficient than oil and adds to the cost consumers pay at the pump. Furthermore, many environmental organizations have raised concerns about the increased inputs of energy, pesticides, and fertilizer needed to grow more corn for ethanol production. World hunger organizations have raised concerns about the mandate’s effect on food prices. If ethanol production is a profitable venture, some claim it should not need to be mandated.

12. Can you justify why we should continue mandating the use of ethanol?

13. The last administrator clearly took on the role of promoting the ethanol industry. Do you believe your role as administrator is to promote one industry over others, or that decisions should be made that consider the protection of the environment and the economy?

Vehicle Emissions

EPA has granted a waiver to California for its Zero Emission Vehicle (ZEV) program.

14. As a general matter, what is your view on sales mandates, i.e., using environmental laws as authority to require that automakers sell a certain number of a particular type of vehicle?

15. Do you believe that a manufacturer should be required to sell the mandated vehicles at a loss if that is the only way to meet the required Government sales volume?

16. What is EPA's role in assessing the efforts of states that adopt this program to create the infrastructure, incentives, and other mechanisms that will help this program be successful?

17. What recourse do automakers have if EPA does not exercise this oversight?

ENERGY STAR Program

EPA recently mandated a third-party certification regime for products in order to participate in the ENERGY STAR program. This appears to be an effort to address concerns raised in a 2010 GAO report. I am concerned the EPA's response is overly broad and attempts to use a one-size-fits-all approach to a program with over 60 diverse product categories.

18. Will you closely review these changes, specifically the addition of the third-party certification process, and meet with industry stake-holders to discuss the real impact of these regulatory changes?

19. Will you ensure that a consensus-based process is utilized, as accredited by the American National Standards Institute, to safeguard transparency and fairness in any changes to and development of the ENERGY STAR program?

20. What is EPA's plan for product categories to "test-out" of the new testing mandates based on their compliance track record?

Water Issues

In 1941, Congress authorized the Yazoo Backwater Project to protect the Delta area of Mississippi from flooding on the Mississippi River. This project included a combination of levees, drainage structures, and pumps. When the time came to complete the final component of the project, backwater pumps to protect homes and agricultural lands, EPA vetoed its construction.

21. How does the construction of a pump, that would complete the Yazoo Backwater Project to protect vulnerable Mississippians from catastrophic flooding, differ from pumps constructed in Louisiana following Hurricane Katrina?

22. How could EPA be more transparent in the decision-making process for situations like the Yazoo Backwater Project, so a congressional hearing is not required to learn what the differences are between the proposed pump project in my state and the important pump projects that were constructed in other states?

Much of your time at EPA has been spent directing the office of Air and Radiation overseeing regulations pertaining to the Clean Air Act. As Administrator of EPA you would oversee a significant amount of regulations and policy development under the Clean Water Act.

23. How would you approach balancing our nation's economic recovery and growth with commonsense policies to ensure Americans have clean water?

24. How would you interact with states when updating or developing water regulations, such as determining numeric nutrient standards for the Mississippi River and Gulf of Mexico?

25. Do you agree that States should be able to provide meaningful input and direct the development process of water regulations with the assistance, not coercion or threat by EPA?

Across Mississippi and the country, many small towns and municipalities have come under pressure by EPA to upgrade their wastewater treatment facilities by more stringent water regulations. A significant and pervasive problem is that many of these towns do not have the tax base or means to meet the cost of upgrading their wastewater systems. However, not acting could result in harsh fines imposed by EPA.

26. Does the concept of imposing fines on small towns across the country for not upgrading water and wastewater facilities – when they have no capital or means to do so – make sense?
27. What options could EPA offer to small towns and rural communities to realistically help them achieve cleaner water standards besides imposing fines?
28. Why has the Administration proposed cutting funding from Drinking Water and Clean Water state revolving funds, in the amount of \$472 million, when localities depend on this funding to help maintain and upgrade critical water infrastructure?
29. Can the cost-savings of this cut to state revolving funds be found elsewhere within EPA's budget that would not significantly impact rural communities?

Expansion and restoration of Mississippi's state port at Gulfport is one of my top priorities. Recently, EPA has weighed in on the process with troubling comments.

30. In reference to the EPA's recent letter to the U.S. Army Corps of Engineers (USACE), Mobile District, related to the Port of Gulfport Harbor Expansion project: Are you aware that the Port of Gulfport (hereafter referred to as "the Port") is currently undergoing an EIS review of its expansion plan?
31. Are you aware that the EIS process is well underway, and in fact is almost half complete?
32. Are you aware of the projects that Region 4 NEPA Chief, Heinz Mueller, has recommended the USACE look at includes the cumulative impacts of the Port expansion project, the proposed MS DOT Hwy 601 project, and a separate project apparently called the "Domain at Prime Centre"?
33. Is Region 4 aware that the ongoing EIS process for the Port expansion is currently reviewing cumulative impacts?
34. Are you aware that the "Domain at Prime Centre" project is in no way a part of the Port expansion project, that it has no official sanction from the Port, that it is not contemplated in any future expansion plans of the Port, and that any claims to the contrary are purposefully misleading and in direct conflict with what has been communicated by the Port and the State to the developers of that property?
35. Please explain why the EPA is attempting to utilize the EIS process of the Port expansion to advance the special interest request of a developer.

36. Can you share all written communications and a list of meetings, with attendees and purposes, between Region 4 and/or EPA HQ employees with representatives of the "Domain at Prime Centre?"
37. Please explain what Mr. Mueller meant in the aforementioned letter by: "...the EPA recommends the use of both regulatory and non-regulatory approaches in an effort to better evaluate the cumulative impacts of these projects..."
38. Are you of the opinion that the process used by the USACE and governed by law and established regulations are somehow insufficient and requires "non-regulatory" additions?
39. What other "non-regulatory" review processes are currently being promoted by EPA and will you attempt to push "non-regulatory" efforts in regulatory processes if you are confirmed as Administrator?
40. Please explain why EPA's Region 4 has suggested the Partnership for Sustainable Communities be engaged in an EIS process for a project that proposes the expansion of a port terminal into the Mississippi Sound and a deepening of the federal channel?

Senator Fischer's Questions for the Record for Gina McCarthy

Spill Prevention, Control, and Countermeasure (SPCC) Plans

- In order to comply with the Spill Prevention, Control, and Countermeasure (SPCC) rule for on-farm fuel storage, EPA officials have said farmers and ranchers need to determine if fuel storage on their farm and ranches “would reasonably be expected” to discharge oil into waters of the United States. If so, they are then subject to the rule. But when questioned, EPA officials have refused to further define the phrase “reasonably be expected” and only say farmers and ranchers should consider a worst case scenario. Could you help my constituents by better defining when a “reasonable expectation” exists? If a farmer determines a reasonable expectation for a spill to reach waters does not exist, what criteria will EPA use to evaluate whether they agree with a farmer’s determination? What certainty do farmers and ranchers have that their determinations will be agreed to by EPA if inspected?

- Does agriculture have a history of large oil or fuel spills?
 - o If not, why did EPA seek to include farms and ranches in the SPCC regulation?
 - o How does EPA justify the possibly significant compliance cost to farmers and ranchers given the lack of history of spills?

- Because of the SPCC regulation, I have heard farmers and ranchers are now buying smaller fuel tanks in order to avoid the high cost of compliance. The smaller tanks mean that fuel delivery personnel would likely need to deliver fuel more often (at a higher cost to the farmer) in order to meet the needs of their customers. Would you agree that large fuel trucks making more trips and spending more time on the road not only increases the potential for a spill from those trucks, but also increases the environmental impacts because of the increased time spent on the road?

Concentrated Animal Feeding Operation (CAFO) Data Release

In 2011, the Department of Homeland Security (DHS), U.S. Department of Agriculture (USDA), EPA, and others engaged in discussions with the Office of Management and Budget's Office of Information and Regulatory Affairs with regard to information sought by EPA through its proposed Clean Water Act Section 308 Concentrated Animal Feeding Operation Reporting Rule. At that time, food and agriculture stakeholders, including DHS and USDA, raised concerns related to biosecurity of the facilities about which information was to be collected and compiled. Concerns were expressed that such information, available in a single publically accessible database, constituted a potential threat to the security of the animal feeding operations listed in the database and even a potential threat to the owners/operators living in close proximity to the operations. At the hearing, you stated, "I'm not familiar with this database." So, I would like to ask again, for the record, will you commit to not developing, contracting for, or implementing a national animal feeding operation database during your tenure, should you be confirmed as Administrator?

CAFO Clean Water Act Permits for "Dust and Feathers"

It is my understanding that EPA has been issuing enforcement orders compelling livestock and poultry farmers to seek a federal Clean Water Act permit for small, incidental amounts of dust, feed, feathers, and manure on the farmyard that could be washed away by rainwater, even if the farm is located a long way from any stream.

Do small amounts of dust, feathers, and manure found on any livestock farmyard require a federal Clean Water Act permit when washed by rain into a stream, or is this ordinary agricultural stormwater specifically exempted from regulation by the Clean Water Act?

Electric Utility Issues

1. Since 2009 EPA has issued or proposed over 2,900 pages of greenhouse gas regulations and you have stated in the past your intent to pursue a "deliberate, common sense approach"[1] to regulating carbon. However, I am concerned that there are inconsistencies with this statement and EPA's actions. For example, EPA entered into a consent decree to issue greenhouse gas New Source Performance Standards for existing units by May 26, 2012. Yet EPA has not clearly stated its plans regarding regulation of existing fossil fuel power plants. I represent a state that gets approximately 70% of its electricity from coal. How do you reconcile these inconsistencies, and can you please explain what the plan really is?

2. Issuing proposed greenhouse gas (GHG) New Source Performance Standards for new and existing power plants carries an additional burden, insofar as these regulations are deemed to be in effect when proposed, not when finalized. Done incorrectly, just proposing these rules has significant negative consequences for our economy. Will you commit that when the EPA is ready to address GHGs from existing fossil fuel power plants, it will issue an Advanced Notice of Proposed Rulemaking (ANPRM) that includes substantive content and a record backing up the proposal to allow industry and others to fully comment on EPA's contemplated approach before moving forward with a proposal?

3. Regarding impacts from final, proposed, and expected EPA regulations on coal-fired generation, please explain the significant differences on coal-fired generation shutdown projections between the EPA projections and industry expert organizations' projections, such as those from FERC, NERC, EIA, and others.

4. How will you assure us that the finalized greenhouse gas New Source Performance Standards for new coal fired power plants will address the concerns that the standards be technically achievable and cost effective?

5. What are your plans to lead the EPA in the forthcoming development of the carbon dioxide New Source Performance Standards for existing power plants? How would you assure these new standards will be technically achievable and cost effective for existing coal fired power plants?

6. How would you assure the upcoming EPA proposed rules to tighten the Clean Water Act power plant effluent discharge standards are reasonable, technically achievable, and cost effective for all fuel types?

7. In your experience and opinion, do you believe states do a good job of protecting state and local environments? Do you believe the states have the first responsibility to develop environmental compliance plans? If so, how would you explain the EPA's recent efforts to put Federal Implementation Plans in place prior to allowing the States to implement their State Implementation Plans?

Coal Ash

What is EPA doing to encourage the recycling of coal ash? As Administrator, will you help the growth in coal ash recycling resume by at least taking the threat of a hazardous waste designation off the table?

Regulatory Certainty for Animal Feeding Operations

Livestock and poultry operations are seeking regulatory certainty on the applicability of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, the Superfund law) and the Emergency Planning and Community Right-to-Know Act (EPCRA) to their operations. Superfund and EPCRA include citizen suit provisions that have been used to sue poultry producers and swine operations. If you are confirmed as EPA Administrator, will you clarify that manure is not a hazardous substance, pollutant, or contaminant under CERCLA and that the notification requirements of both laws would not apply to releases of manure?

City of Omaha-CSO Affordability

Our communities are facing a number of environmental challenges associated both with aging infrastructure and federal mandates. Many of our rural communities are facing huge economic challenges in financing upgrades to drinking water and wastewater infrastructure, while their demographics are aging and overall populations are declining. It is difficult for many communities to finance such improvements, and the economic sustainability of these communities is highly problematic.

Our urban centers are also facing economic challenges to comply with a number of sometimes competing federal environmental mandates. Nebraska's largest city, Omaha, is one of 772 U.S. communities that is mandated to reduce combined sewer overflows (CSOs) from its regional wastewater treatment system. Omaha's cost for CSO compliance over the next 15 years is estimated at \$2 billion and will more than double the city's existing debt burden. Residential sewer bills are projected rise from \$10/month to more than \$50/month by 2017.

On January 18, 2013, EPA Headquarters issued a memo presenting a framework for community financial capability assessment. Under your leadership, how do you see EPA and state and local governments working together to prioritize local environmental investments in an affordable, financially sustainable manner for all community stakeholders?

Ozone

1) Funding for mitigation activities related to ozone is currently tied to “non-attainment” status. Therefore, communities such as the Omaha metro area, which are currently in “attainment” but are trying to be pro-active and address ozone-forming emissions prior to violating air quality standards, have little financial assistance available. This places communities in the unenviable situation of having to violate air standards in order to become eligible for additional funding. EPA recently developed the Ozone Advance program to attempt to provide funds for metro areas, such as the Omaha region. Would you take proactive measures, such as participation in Ozone Advance, into consideration when designating whether a region will be deemed “non-attainment”? And would you champion opportunities to provide funding for communities that are in attainment?

2) High ozone formation frequently occurs as a result of natural processes (heat, lack of wind, etc.) that are beyond human control. Emissions traveling from other metro areas can also have an impact. For instance, in the Omaha metro area, one can track a direct correlation between the number of high ozone days and extreme high temperature days, whereas mild summers usually result in few, if any, high ozone days. We also have annual burns that occur in the Flint Hills in Kansas that appear to contribute air quality problems. It is unfair to punish communities for factors that are beyond their control. How would EPA take into account factors that are beyond a region’s control when designating attainment and non-attainment areas?

3) The EPA Clean Air Scientific Advisory Committee (CASAC) last recommended the Ozone standard be set at a range between 60 and 70 parts per billion (ppb). If the standard were set at 60 parts per billion, the vast majority of the United States—including the Nebraska Panhandle (due to emissions from the Denver metro area), one of the most sparsely populated regions of the United States—would be in violation of the standard. Many metro areas who struggled for years to attain the standard set in 1997 now fear the standard will be set at an unrealistic level that will only result in perpetual non-attainment status. How would you apply common sense and reasonableness in setting air quality standards? Do you think that there are diminishing returns of further reducing air quality standards past a certain point?

Hazardous Air Pollutant Regulations for Stationary Irrigation Engines

- In 2009, the EPA released their new National Emissions Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines. For engines with less than 300 brake horsepower— which would include many diesel irrigation engines across Nebraska, EPA has essentially turned regular maintenance (changing oil filters and inspecting equipment regularly) into a federal mandate. Please explain the air quality value of making it a federal requirement for farmers to conduct maintenance that they are already doing and maintaining five years' worth of records to show to EPA if they knock on the door of a farmer?
- How does EPA plan to enforce this rule and what type of financial resources is EPA planning to put forth for enforcement and compliance?

Biotechnology

- 1) Agricultural biotechnology provides farmers with new tools to manage weeds, insects, and drought. In the case of weeds, the need for herbicides with multiple modes of action is something farmers are demanding in order to preserve yield while trying to manage resistant weeds. Approximately 60% of all biotechnology traits pending review have a herbicide-tolerant component to them, requiring timely EPA review and action. What will your agency do to meet the needs of growers and accelerate the approval of these products that not only enable solutions to weed management, but also preserve the ability to utilize environmentally beneficial soil-conserving practices, like conservation tillage?
- 2) Over 13 years ago this month, the National Research Council of the National Academy of Sciences released its report on EPA's proposed regulation of insect-resistant traits in transgenic plants. While the report noted that EPA's intent to regulate such substances was consistent with its statutory authority, it recommended that EPA dispel any notion that transgenic plants themselves were being regulated by EPA as pesticides. Under the Executive Branch's Coordinated Framework for Regulation of Biotechnology, in effect since 1986, EPA is responsible for regulating pesticides while the Secretary of Agriculture is responsible for regulating plants and seeds.

In July of 2011, more than 60 members of the National Academy including two Nobel Laureates wrote to Administrator Jackson to voice their concern that EPA was attempting to “expand its regulatory coverage over transgenic crops in a way that cannot be justified on the basis of either scientific evidence or experience gained over the past several decades, both of which support the conclusion that molecular modification techniques are no more dangerous than any modification technique now in use. The increased regulatory burdens that would result from this expansion would impose steep barriers to scientific innovation and product development across all sectors of our economy and would not only fail to enhance safety, but would likely prolong reliance on less safe and obsolete practices.”

Not long after, the Biotechnology Industry Organization wrote to Administrator Jackson expressing similar concerns and citing specific examples that “suggest rather strongly that, as a practical matter, [EPA] is looking to expand its oversight over biotechnology products and regulate plants themselves as pesticides.” The industry’s letter warned that such policy shifts would create a regulatory system for low-risk products with substantial environmental benefits that “is not only duplicative but also dismissive of science and experience” and conflicts with the Principles for Regulation and Oversight of Emerging Technologies that was issued by the White House in support of Executive Order 13563.

In spite of these pleas to the Administrator, reports of EPA’s efforts to regulate transgenic plants and seeds that have insect-resistant traits continue to be received. Can you assure this Committee that, if confirmed, you will work to ensure that, in regulating products of biotechnology that contain insect-resistant traits, EPA will respect sound scientific principles and the division of responsibility set out in the Coordinated Framework?

Ethanol

1) Nebraska is a leading ethanol producer, and I want to ensure that my constituents continue to have the ability to purchase Flex Fuel Vehicles (FFVs) and fuel up with higher ethanol blends. Do the new Corporate Average Fuel Economy (CAFE)/greenhouse gas rule and accompanying guidance appropriately incentivize production of FFVs? If so, how? Is the incentive on par with that of electric vehicles?

2) It is my understanding that the evaporative emissions profile for E15 and higher ethanol blends is actually somewhat better than conventional E10 gasoline. Is this true, and if so, why are EPA’s current Vapor Control requirements locking these blends out of the year-round fuel market?

Consultation Process for Pesticides under the Endangered Species Act

I am very concerned about how the Endangered Species Act (ESA) is being used to disrupt the supply of pesticides that are vital to American agriculture. I know that this is not a subject that has come within your authority in your prior position, but I need to be sure it will receive your attention if you are confirmed as Administrator.

As I understand it, EPA has been subjected over the last decade to several lawsuits on the issue of its ESA responsibilities, and is now working hard to balance its obligations under both the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide statute and the ESA. To that end, I also understand that the Agency's Office of Pesticide programs intends to catch up on most of its ESA responsibilities through the registration review program that was mandated by Congress in 1996, and which is statutorily required to be completed by 2022. That will be a very big job, since there are thousands of individual products that contain over 1000 different active ingredients. But addressing ESA issues in the structured registration review program seems to me sensible and a reasonable use of limited budgetary resources.

But it seems to me there is a big problem here, because in reality the U.S. Fish & Wildlife Service and National Marine Fisheries Service with which EPA is supposed to consult cannot keep up with you. The Services have been pretty clear about this. They have told both EPA (in a January 2009 letter) and a House Oversight Committee (at a May 2011 hearing) that they do not have adequate resources to keep up with the pace of EPA consultation requests. Indeed, EPA told that same House Oversight Committee that, at least as of 2011, about a third of your consultation requests were met by the Services with claims that they needed more information from EPA, and about half received no response at all.

· In view of these facts, do you think that there is any realistic basis to believe that registration review can be completed in the timeframe set by Congress? If so, please explain. How, as Administrator, would you overcome the roadblock to completion of registration review on a timely basis that the Services' limited capabilities obviously present?

· I understand that a policy notice that the EPA published on March 19 said that the Agency hoped to limit its burdens in this area by convincing registrants to limit the use of their products in some areas, so that no consultation would be necessary. Do you believe this is a realistic strategy? If so, please explain. Do you believe EPA adequately has considered the economic impact of imposing such limitations on farmers? Do you believe EPA has adequately considered what the ecological impact might be if farmers switched to alternative pesticides or agronomic practices?

I also have been very troubled to hear that confusion over the Agency's policy in implementing ESA requirements is delaying the approval of several products that are of critical importance to farmers who are facing increasing difficulties with glyphosate-resistant weeds. Almost a decade ago, in what I understand is generally referred to as the "Overview Document" (but more formally known as the *Overview of the Ecological Risk Assessment Process in the Office of Pesticide Programs*), EPA stated a policy of deferring until registration review all ESA reviews except those for new pesticide active ingredients, for "new uses" for existing products, or for emergency or special local need situations. Again, this makes good sense to me.

But I also understand that the Agency in fact is allowing fear of additional ESA suits to hold up other registration actions, including some of critical importance to growers. So here are my questions on this subject:

- Has the agency abandoned or modified the policy stated in the Overview document? If so, why? And how has it communicated its change(s) in policy to stakeholders? If not, in your view, what circumstances are sufficient to allow deviation from that policy?
- Are you personally satisfied that the deviations that have occurred received adequate consideration at appropriate levels of the agency?

Finally, I am concerned that EPA has moved away from respecting a key policy stated by Congress in 1988—that the concerns of those involved in producing food and fiber be respected as ESA is implemented and, most importantly, that the impacts of the implementation of the ESA on agricultural production be minimized. (That policy was embodied Section 1010 of Pub. L. 100-478.) I recognize that the publication last month of the policy statement on stakeholder participation in ESA consultation processes, to which I referred above, was one effort to address those concerns. But I am very concerned about how that policy is going to be implemented, and whether other steps can be taken to assure farmland is not forced out of production without very solid evidence of an imperative need to do so. What further steps do you believe EPA should take to achieve that result?

Insecticide Review Process Changes

As a result of litigation, it is my understanding that EPA is accelerating its timetable in reviewing important agricultural crop protection products (chlorpyrifos) and attempting its first ever assessment of volatility exposures from the use of non-fumigant products. I understand that because of this short litigation-driven time-frame, the assessment is highly precautionary and assumption-based, and EPA lacks an established regulatory policy on which to proceed.

This unrefined assessment could result in posted buffers all the way around the perimeter of treated fields that measure 361 feet to as high as 4,724 feet, and this approach would also create precedents for other pest control products that would become increasingly burdensome over time. Given these potential impacts, shouldn't adequate time be taken to develop a regulatory policy that considers feasibility and economic impact on agriculture, rather than placing our American farmers at a competitive disadvantage to satisfy frequent litigators?

Has the Agency actually evaluated if there is any data that indicates exposure to vapors of these compounds have ever caused observable effects in animals by inhalation without first creating aerosol droplets of the product?

Sulfuryl Fluoride

In January of 2011, the Agency proposed rulemaking to withdraw the food tolerances for the fumigant sulfuryl fluoride (SF)—a product the Agency has aggressively promoted as a substitute for methyl bromide, a pesticide being phased out due to environmental concerns. SF helps safeguard public health by helping keep food and feed safe from dangerous and destructive pest infestations. The U.S. Department of Agriculture, Natural Resources Defense Council, and numerous industry groups have objected to the Agency's proposal. Even the Agency noted in the January 19, 2011, Federal Register notice that SF contributes no more than 2-3% of the public's exposure to fluoride, that use of SF is responsible for a tiny fraction of aggregate fluoride exposure, and elimination of SF does not solve, or even significantly decrease, the fluoride aggregate exposure problems.[2]

Why then has the Agency included exposure to naturally occurring fluoride in drinking water systems and fluoride to toothpaste in its Section 408 Federal Food, Drug and Cosmetic Act aggregate risk assessment of the pesticide SF when neither naturally occurring fluoride nor toothpaste is a "pesticide chemical residue" under the statute and the Agency has another statute—the Safe Drinking Water Act—that expressly applies to the naturally occurring fluoride exposure issue?

Fill Material

The current definition of fill material, finalized in May, 2002, unified the Corps and EPA's prior conflicting definitions so as to be consistent with each other and the structure of the CWA. The current rule solidifies decades of regulatory practice, and includes as fill material those materials that, when placed in waters of the U.S., have the effect of raising the bottom elevation or filling the water. However, both EPA and the Corps have stated that they are now considering revising the definition of fill material.

- a. What is EPA's rationale for revisiting the well-established division of the Section 402 and Section 404 programs?
- b. What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?
- c. Has EPA yet considered the time and costs associated with making such a change to the two major CWA permitting schemes—Sections 402 and 404?

Willingness-to-Pay Surveys/Economic Impact Analysis

EPA is increasingly using "willingness-to-pay" (WTP) surveys to supplement the expected benefits of regulatory actions with substantial projected costs. Two recent examples include the proposed Clean Water Act section 316(b) requirements for cooling water intake structures (CWIS) and total maximum daily load (TMDL) cleanup plans for nutrients and sediments in watersheds. EPA estimated CWIS costs at over \$300 million, although the final rule could change significantly. EPA estimated TMDL capital costs of \$28 billion and an additional \$2.7 billion dollars per year for operating and maintaining costs. The surveys are intended to represent what price people might assign to a theoretical effect (e.g., having a healthy fish population) of a proposed rule from which they gain no direct benefit. Thus, the effects are a hypothetical and subjective justification for the proposed rule. As such, it would be inappropriate for EPA to count the results of these surveys as actual monetary benefits for a proposed rulemaking.

Economic experts have concluded that there are very few instances in which such a complicated subjective tool can be used with any degree of reliability. Following a National Oceanic and Atmospheric Administration (NOAA) blue-ribbon panel review of contingent valuation surveys, a Nobel laureate economist on the panel noted that “many departures from the guidelines or even a single serious deviation would, however, suggest unreliability prima facie.”[3] Although guidelines for WTP studies require that surveys be well-designed, extensively peer-reviewed, and subject to reliability testing, EPA has largely ignored comments from the public that raise serious concerns about the nature of the survey.

- Do you believe these willingness-to-pay surveys should be used to enhance the benefits of a proposed rule?
- Do you believe that EPA should address public concerns about the direction of EPA’s monetization of these survey results and their use in benefit calculations for proposed rulemakings?
- What steps will you take as Administrator to ensure that EPA’s assessment of economic costs and benefits of its proposed rules meet standards for high quality and reliability?

Uranium

1. It is my understanding that over the past three years EPA has caused significant delays and interference with the implementation of several state’s Underground Injection Control (UIC) programs with respect to the approval of new EPA Class I disposal well permit applications, renewal of existing disposal well permits, and EPA Class III well permits. These particular states have for many years maintained their UIC program primacy and have successfully implemented EPA’s UIC programs with limited EPA oversight. Why is EPA now inserting itself into the permitting process for UIC programs where the states have primacy for these activities?
2. To the extent that EPA does seek to make changes to the existing requirements, will you commit to a public process that includes input from members of the uranium industry?
3. Will you commit to adding at least one representative from the uranium industry on EPA’s Science Advisory Board that is currently evaluating the need for pre-operational baseline monitoring as well as additional post-mining monitoring?

[1] House Energy and Commerce Committee Hearing, held June 29, 2012.

[2] <http://www.gpo.gov/fdsys/pkg/FR-2011-01-19/html/2011-917.htm>

[3] "Report of the NOAA Panel on Contingent Valuation," 58 Fed. Reg. 4608, 1993.